United States Court of Appeals

for the Second Circuit

APPENDIX

No. 76-4051

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

ADAMS IRON WORKS, INC.,

Respondent.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

APPENDIX

ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570

UNITED STATES COURT OF APPEALS
FILED
JUN 9 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

ABS DUPLICATORS, INC.—1732 Eye Street, N.W.—Washington, D.C.—298-5537

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

ADAMS IRON WORKS, INC.

and Case No. 29-CA-3968

SHOPMEN'S LOCAL UNION NO. 455,
INTERNATIONAL ASSOCIATION OF
BRIDGE, STRUCTURAL AND ORNAMENTAL
IRON WORKERS, AFL-CIO

* * * * *

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Adams Iron Works, Inc.,
Case No.: 29-CA-3968

3.26.74	Administrative Law Judge's Decision, dated
4.29.74	Board's Order, dated
8.15.74	Charge filed
10.31.74	Complaint, dated
11.18.74	Answer, dated
11.27.74	Order Rescheduling Hearing, dated
12.18.74	Hearing opened
12.18.74	Hearing closed
3.28.75	Administrative Law Judge's Decision, dated
5. 6.75	General Counsel's Exceptions, received
5.15.75	Respondent's Exceptions, received
10.23.75	Board's Decision and Order, dated

[undated]

* * * * *

DECISION

Statement of the Case

ROBERT E. MULLIN, Administrative Law Judge: This case was heard on December 18, 1974, in Brooklyn, New York, pursuant to a charge duly filed and served,[1] and a complaint issued on October 31, 1974. The complaint presents questions as to whether the Respondent violated Section 8(a)(1), (3) and (5) of the National Labor Relations Act, as amended. In its answer, duly filed, the Respondent conceded certain facts with respect to its business operations, but it denied all allegations that it had committed any unfair labor practices.

At the trial, the General Counsel and the Respondent were represented by counsel. All parties were given full opportunity to examine and cross-examine witnesses, and to file briefs. A motion to dismiss, made by the Respondent at the hearing, and renewed in its brief, is disposed of as appears hereinafter in this Decision. The parties waived oral argument. On February 6, 1975, both the General Counsel and the Respondent submitted briefs. Upon the entire record in the case, including the briefs of counsel, and from his observation of the witnesses, the undersigned makes the following:

Findings of Fact

I. The Business of the Respondent

The Respondent, a New York corporation with a principal office and place of business in Brooklyn, is engaged in fabricating and installing ornamental iron railings and related products. The Respondent stipulated that in each of the calendar years 1971, 1972 and 1973, it annually purchased iron and related products valued in excess of $50,000 from wholesale distributors in

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[1] The charge was filed on August 15, 1974.

New York State which firms, in turn, purchased such iron and related materials valued in excess of $50,000 directly from firms located in foreign countries such as Germany, Belgium, France, Italy and Japan. The Respondent further stipulated that during those same years the Respondent's gross sales were from $200,000 to $280,000 per year. Upon the basis of the foregoing facts, for the years 1971 through 1973, the Respondent was clearly engaged in commerce within the meaning of the Act. *Siemons Mailing Service,* 122 NLRB 81, 85 (1958).

In July 1973, the employees of the Respondent went to strike and began picketing its premises. The picketing and the strike continued until late in May, 1974. During this period the Respondent's business experienced a precipitous decline. At the time of the hearing the parties stipulated that, for the calendar year 1974, the Respondent's purchases would not excess $32,000 and its sales would probably approximate only $90,000. Although this volume of business does not meet the jurisdictional standards set forth in *Siemons, supra,* such a decline, largely due to the picketing, "can not be taken into consideration as a factor in defeasance of the jurisdiction of the NLRB." *Cox's Food Center, Inc., et al.,* 164 NLRB 95, 96 (1967). Since the period prior to the strike is more representative of the Respondent's annual business operations, it is that period which must be used to determine whether the Board should assert jurisdiction here. *Fairmount Construction Company,* 95 NLRB 969, 971 (1951); *Hygienic Sanitation Company,* 118 NLRB 1030, 1031 (1957). On that basis, and applying the Board's jurisdictional standards to the calendar years 1971 through 1973, it is now found that the Respondent, at all times material herein, has been engaged in commerce within the meaning of the Act.

II. The Labor Organization Involved

Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, herein Local 455, or Union, is a labor organization within the meaning of the Act.

III. The Alleged Unfair Labor Practices

A. Background

The Respondent is a small ironworking shop in Brooklyn, with less than 10 employees. The president and sole stockholder is Joseph Bonanno, a man now 40 years of age, who is a naturalized American citizen, having come to this country from Italy when he was 23 years old. In 1964, the Respondent signed its first contract with Local 455. Its last contract with the Union expired on June 30, 1973, and after extended negotiations between the parties had been fruitless. On July 2, 1973, the Union struck and commenced picketing the Respondent's shop. The picketing continued until late in May 1974.

In December 1973, and on the basis of a charge filed the preceding October, the Regional Director issued a complaint in Case No. 29-CA-3596, alleging that the Respondent had engaged in conduct violative of Section 8 (a)(5) and (1) of the Act. After a hearing on March 26, 1974, before Samuel Ross, Administrative Law Judge, the latter issued a decision wherein he found that the evidence sustained the allegations of the complaint. The Respondent filed no exceptions to this decision and on April 29, 1974, the Board adopted the findings and conclusions of the Administrative Law Judge as its own and ordered the Respondent to take the action set forth in his recommended order.

B. The Appropriate Unit and the Majority Issue

In Case No. 29-CA-3596, herein *Adams I,* the Board found that all production and maintenance employees, including plant clericals, at the Respondent's plant, exclusive of office clericals, guards and supervisors, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act. In that same decision the Board found that, by virture of Section 9(a) of the Act, the Union has been, at all times

material, the exclusive representative for the purposes of collective bargaining of all employees in the above-described unit.

At the hearing in the instant case, President Bonanno testified that the Company is still engaged in the same type of business as it was during the course of the proceedings involved in *Adams I.* Consequently, and because, in the latter case, the Board found that the Union had a majority status at the time of the unfair labor practices in question, it is now found that the aforementioned unit remains the appropriate unit for the purposes of collective bargaining and, further, that the Union has retained its status as the majority representative at all times material. *Barrington Plaza and Tragniew, Inc.,* 185 NLRB 962, 963-964 (1970); and *Dimarck Broadcasting Corporation,* 204 NLRB No. 47, p. 3 (1972).

One of the issues in *Adams I,* was the contention of the Respondent that the appropriate unit did not include its "outside" employees. The Board found against the Respondent in this issue. The Board further held that the Respondent violated Section 8(a)(5)[2] of the Act by (1) insisting on a clause in any new contract that its coverage be limited to no more than three employees regardless of how many more than three the Company hired and employed in the appropriate unit and (2) by insisting that the Union assure the Company that it would not utilize the grievance procedure of the contract to protest the discharge of three employees who were terminated in June 1973. The Board found that the strike which began on about July 2, 1973, was caused, at least in part, by the Respondent's insistence on

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[2] The Respondent has two types of employees, "inside" employees who are mechanics that cut, weld, fabricate, and paint iron railings and similar products and "outside" employees who transport the products which are made in the shop by truck to the customer's premises and thereafter install them on the site. As to several individuals, however, this distinction was blurred, for the Board found that the "outside" employees also do inside work when not engaged on installation jobs.

the above-described illegal conditions for executing a renewal contract with the Union, and that it was, therefore, an unfair labor practice strike. As a result, the Board's order directed, *inter alia,* that the Respondent reinstate and make whole, upon their unconditional application, all employees who went on strike.

C. Sequence of Events in Case No. 29-CA-3968 and Findings of Fact in connection therewith

William Colavito, president of the Union, testified that late in March, 1974, and shortly after the issuance of Judge Ross' decision in *Adams I,* he met with one Jack D'Angelo at a coffee shop not far from the Respondent's plant. According to Colavito, the following discussion ensued:

At the outset of the conference, which lasted about an hour and a half, D'Angelo described himself as a friend of Bonanno and stated that he "had a piece of the business." D'Angelo told Colavito that he wanted to explore the possibility of settling the strike which was still in progress. He explained Bonanno's absence from the meeting on the ground that the Respondent's president was of a very volatile temperament and that it would be best for Bonanno to remain out of the initial discussions. Colavito told D'Angelo that the Union would be willing to make some concessions because the Respondent had a small shop and because the strike had been in progress for such an extended period. In accord with this promise, Colavito told D'Angelo that (1) whereas the new contract for the industry provided for double time on Friday and Saturday, for Bonanno's Company, Local 455 would agree to only time and a half for work on those days and (2) whereas the new contract restricted the number of apprentices, or laborers, to one for every six journeymen and prohibited laborers from using tools, for the Respondent, Local 455 would agree to change this clause to allow a ratio of laborers equal to 50 percent of the work force and eliminate the prohibition on the

laborers handling tools. D'Angelo accepted these changes and concluded the meeting with a commitment that he would keep in touch with Colavito and telephone the Union to arrange another meeting.

As found earlier herein, on April 29, 1974,[3] in *Adams I*, the Board adopted as its own the decision of Judge Ross which had been issued on the preceding March 29. Colavito testified that a short time later the Union contacted Richard Gaba, who was counsel of record for the Respondent in that proceeding, and arranged for a meeting. Soon thereafter Colavito received a telephone call from D'Angelo who said that he also would attend.

The meeting was held at the Holiday Inn at LaGuardia Airport on May 8. In attendance for the Union were President Colavito and Vice President Antonio Schifano. Present for the Company were Bonanno and D'Angelo. Joel Schonfeld, an attorney and friend of D'Angelo, was likewise present.[4] According to Colavito, D'Angelo introduced the latter as "Joel Schonfeld, he is our attorney." Attorney Gaba was not present at the outset of the meeting and did not arrive until some time later. Bonanno told those present that he would wait in the lobby of the motel until Gaba arrived. In the meantime, the union representatives, along with D'Angelo and Schonfeld, departed for the motel coffee shop where they engaged in an extended conference on the Respondent's problems. The subject matter discussed, as described in the mutually corroborative testimony of both Colavito and Schifano, is set forth below.

D'Angelo asked if the Union would insist on the strikers being reinstated, and the union representatives answered in the affirmative. D'Angelo then

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[3] All dates hereinafter are for 1974, unless specifically noted otherwise.

[4] In attendance also was an individual identified only as "George" who took no active part in the proceedings.

asked if the Company could hire some new men and Colavito told him that that would be possible only after the strikers had been called back to work and that if the Respondent needed any additional employees it would have to secure them through the union hiring hall. Colavito again summarized the Union's willingness to make the concessions on overtime and on the use of laborers or apprentices which had been discussed in March. D'Angelo told him to incorporate these concessions in the proposed contract and give copies to Attorney Schonfeld. According to Colavito, D'Angelo promised to discuss the matter with Bonanno and then contact the union officials about another meeting.

At this point, the union officials, along with D'Angelo and Schonfeld, left the coffee shop and went to the motel lobby. There they found Gaba and Bonanno. The Respondent's president then took the union representatives back to the coffee shop and told them that Gaba wanted to talk with them. According to Colavito, Bonanno thereupon initiated a tearful scene in which he started to cry and exclaimed that he could not survive with a shop in which all the workers had to be covered by a union contract. Gaba, however, cut short this emotional outburst with a pointed reference to the Board's recent decision on that issue and said "We can't do anything about that anymore." Gaba then suggested that they begin a study of the proposed contract section-by-section. Colavito immediately objected that the Union had already done that with D'Angelo earlier that very morning and that he would not deal with two sets of negotiators. Colavito testified that at this point, Gaba volunteered to withdraw and Bonanno acquiesced with the statement to the union officials, "Okay you work it out with Jack [D'Angelo]." According to Colavito, they then returned to the lobby where they rejoined D'Angelo and Schonfeld. Colavito testified that Bonanno thereupon reiterated the comment he had made earlier and said to the union officials, "Look, work

it out with Jack [D'Angelo]" at which point D'Angelo suggested to the union representatives "Get those contracts to Schonfeld and as soon as [we] have a chance to look it over we will have another meeting." According to Colavito, Schonfeld then gave him his card and the meeting was concluded.[5]

Both D'Angelo and Bonanno were on the witness stand. They gave no testimony about this meeting which conflicted with the mutually corroborative testimony of Colavito and Schifano that is related above. Bonanno testified that before the meeting he told Colavito that he had asked D'Angelo

> "to help any way to see what deal could come out, give me a better deal, something [that would enable me] to survive, and then he come to me . . .[6]

Later, Bonanno added that at this time he told Colavito: "Talk to Jack [D'Angelo] maybe you don't want to say to me something you want to say to him." Colavito and Schifano were credible witnesses. In view of this conclusion and the lack of conflicting testimony about the substance of the discussion which occurred at the meeting on May 8, the undersigned concludes and finds that the testimony of Colavito and Schifano, outlined above, sets forth a substantially accurate account of what transpired on that occasion.

At the hearing, D'Angelo conceded that at the conclusion of the meeting on May 8 he asked that Colavito supply Schonfeld with copies of the Union's proposed contract. Colavito complied with this request and shortly after the latter meeting, Schifano brought copies of the Union's proposal to Schonfeld's office. Colavito testified that about 2 weeks later he had a chance meeting

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[5] The quotations in this paragraph are from Colavito's testimony.

[6] After making this statement when on the stand Bonanno added "I don't authorize him [D'Angelo] to sign a contract." This comment by Bonanno, however, was a statement of his own attitude at the time of the hearing and did not constitute testimony on his part that he at any time informed the Union that D'Angelo had no such authority.

with Shonfeld in the lobby of the building where the lawyer had his office and that Schonfeld told him" . . . everything looked all right, the [only] problem was getting together with the parties because he was extremely busy."

On May 29, 1974, Colavito and Schifano met again with D'Angelo and Schonfeld at the Holiday Inn. Colavito's query as to whether Bonanno would participate was met by D'Angelo's answer that "Joe won't be here." D'Angelo began with a discussion of further objections which he said that Bonanno had raised as to the Union's proposed contract. One related to a provision which required that the employer have a working foreman and another to the length of the agreement which, by its terms, would expire on June 30, 1975. D'Angelo protested that the Respondent could not afford to hire a working foreman and asked that the Union allow Bonanno to give himself that designation. Colavito and Schifano agreed to this change. They also agreed to make all provisions of the contract effective as of May 29, 1974, and to extend the term of the agreement from June 30, 1975 to June 30, 1977. The union representatives likewise reaffirmed their willingness to incorporate the changes on overtime and the modification of the rule on apprentices and laborers which had been discussed on May 8. D'Angelo again raised the question as to whether all the strikers would have to be rehired and Colavito reiterated that this would be necessary in order for the Respondent to comply with the Board decision in *Adams I.*

The draft which Colavito sent to Schonfeld prior to this conference incorporated the concessions on overtime and on the required ratio of laborers and apprentices to journeymen which the Union had made at the meeting on May 8. Before concluding the meeting on May 29, Colavito wrote in the additional concessions to which the Union had agreed whereby Bonanno

himself could act as a working foreman, all provisions of the contract would be effective on May 29, 1974, and the term of the agreement would extend to June 30, 1977.[7]

At the conclusion of the meeting, Colavito signed the contract as president of Local 455 and, on the signature line for the employer, D'Angelo wrote his name over a line that was designated by the term "Person authorized to sign." Colavito testified that when, as noted earlier, D'Angelo stated that Bonanno would not attend the meeting, he added that, in the shopowner's absence, "I'm going to sign, I'm a partner." This comment which Colavito attributed to D'Angelo was never specifically denied by the latter when he was on the witness stand. Both Colavito and Schifano credibly testified that when the contract was ready for execution, D'Angelo questioned Attorney Schonfeld as to whether he could sign the instrument and Schonfeld answered in the affirmative. While on the stand, D'Angelo testified that when he was asked to sign he protested that he was not an officer of the corporation and that he discussed the matter with Schonfeld. Nevertheless, D'Angelo acknowledged that thereafter he signed the document.

The Union removed its pickets immediately after the contract was signed. On June 3, the following Monday morning, Union Representative Schifano, accompanied by former employee John Mazzanti, appeared at the Adams Iron Works. They were met by Bonanno who demanded an explanation for their presence. Schifano testified that he protested "Joe, what is the matter? We have an agreement . . ." and that Bonanno's response was "We don't have no agreement . . . The kind of contract that that guy [D'Angelo] signed . . .

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[7] The findings set forth in the preceding three paragraphs are based on the testimony of Colavito and Schifano, both of whom were credible and most of whose testimony was corroborated by D'Angelo.

I could have gotten myself, I didn't need him."[8] Schifano testified that Bonanno then went on to revive the objection to the unit which the plant owner had raised earlier and which the Board had rejected in *Adams I, viz.* that his business could not survive if the Union had the right to bargain collectively for all his employees. Bonanno closed the discussion with the statement that he had discharged Attorney Gaba and that the Union would soon receive a letter from his new lawyer. That latter was Attorney John C. Ferlaino, who appeared for the Respondent in the present case.

In a letter dated June 11, Attorney Ferlaino wrote the Charging Union that henceforth he would represent the Respondent. In this letter, counsel for the Company stated that in connection with the contract which D'Angelo had executed the latter had acted without authority, since he was not an officer, director, agent or employee of Adams Iron Works and that, consequently, the agreement was not binding on the Respondent. The letter closed with the statement that he and Bonanno stood ready to discuss "union matters"[9] with Local 455.

On June 26, Colavito and Schifano met at the Company's office with Bonanno and Attorney Ferlaino. Bonanno reiterated his complaint that he could not operate his shop if all the employees had to be in the unit, that at most he could not have more than half his employees in the Union, and that D'Angelo had no authority to sign a contract. Colavito protested that the Union felt that it had a contract, that it had negotiated in good faith

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[8] Bonanno testified that at this time he also told Schifano "I no authorize anybody to sign my contract." This testimony, however, did not have an air of persuasiveness at the time it was given and after a consideration of the account which Schifano gave of this meeting, as well as the respective demeanor of these witnesses at the time of the trial, it is the conclusion of the undersigned that Schifano gave the more accurate account of what transpired on that occasion.

[9] The term in quotation marks is from the letter.

and made concessions, that as to any further negotiations the Union would consider some additional minor concessions, but that it would not undertake to begin negotiations *ab initio*. Counsel for the Respondent concluded the meeting with the promise that after he reviewed the contract in question, he would contact the Union.

In a letter dated July 1, Attorney Ferlaino wrote the Union that his client

> . . . . finds it impossible to consider the contract. If you are disposed to offer substantial and far reaching modifications in the benefits and also wage rates, and other items, then we are disposed to discuss . . . same with you.

There was no further contact between the parties subsequent to the date of this letter. Both Colavito and Schifano testified, credibly and without contradiction, that at no time since May 29 has the Company honored the contract which D'Angelo executed on that date.

D. Reinstatement of the Strikers

The Board decision in *Adams I*, required that upon their unconditional application, the Respondent offer to all employees who went on strike on July 2, 1973, immediate reinstatement to their former jobs and make them whole for any loss of earnings, in the event they were not promptly reinstated.

As noted earlier, the Union's picketing was discontinued on May 29. In a letter dated June 13, 1974, the Union, on behalf of the strikers, made an unconditional application for the reinstatement, *inter alia*, of Antonio Cirillo,[10]

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[10] In the Union's letter and in the complaint the name of this individual was spelled "C-i-v-e-l-l-o." At the hearing, however, Bonanno testified that the correct spelling of this employee's name is as it appears in the text, *supra*.

Gaspare Santamaria, T. Gibaldi, Vito Chimenti,[11] and John Mazzanti.[12] The Company never acknowledged this demand and made no effort to comply with the request. During the week ending August 2, Cirillo was reemployed and during the week ending September 13, Santamaria was reemployed. During the period subsequent to the Union's request that the strikers be replaced, the Respondent took on two new employees. One, A. Perulli, was hired during the week ending June 21 and another, G. Fornarelli, was hired during the week ending November 8. Notwithstanding the employment of Perulli and Fornarelli, the Respondent never reemployed Gibaldi and Chimenti.

Bonanno testified that during the week ending June 14, he had three employees: Domenick Savona, who worked in the shop as an "inside" employee; C. LaMarca, a truckdriver who also did repair and installation work; and Philip Savona, who did installation work. Bonnano testified that before the strike four strikers named below, whom the General Counsel alleged should have been reinstated, had been performing the following types of work: Cirillo worked both inside the shop and outside on installation work; Chimenti worked inside the shop at painting and as a general helper; and Gibaldi and Santamaria worked inside as general helpers.

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[11] In some parts of the record this name is also spelled "C-h-i-m-e-n-t-o."

[12] John Mazzanti was an employee who was fired either shortly before or shortly after the strike began. Colavito testified that during the collective-bargaining negotiations with D'Angelo the latter agreed that Mazzanti would be rehired along with the strikers. Colavito acknowledged, however, that there was no specification to that effect written into the collective-bargaining agreement or in any other document. At the hearing, the General Counsel conceded that Mazzanti was not entitled to the rights of an unfair labor practice striker. Nevertheless, the General Counsel alleged that Mazzanti should be reinstated as part of the agreement which the Respondent made with the Union during negotiations. The record does not support this contention and it will be recommended that the allegations in the complaint as to Mazzanti be dismissed.

The names of Giovani Cirillo and Nick Sorrentino also appeared in the Union's letter of June 13, but in his complaint the General Counsel did not include them in the list of alleged discriminatees. At the hearing the General Counsel's representative stated that he was not contending that the latter two were unfair labor practice strikers.

Concluding Findings

In *Adams I* the Respondent was ordered to offer all employees who went on strike and who unconditionally applied for their former jobs "immediate and full reinstatement . . . dismissing, if necessary, any persons hired as their replacements." It is undisputed that Cirillo, Chimenti, Gibaldi, and Santamaria who, through the Union, unconditionally applied for reinstatement, were not immediately offered work. At the time of the hearing only Cirillo and Santamaria had been reemployed, whereas Chimenti and Gibaldi were never returned to work, even though the Respondent hired two employees in the interim.

The Respondent made no effort to show that it had nothing available for the unfair labor practice strikers at the time of their application for reinstatement. At that time the Respondent had three employees in the appropriate unit who were doing the same work as the strikers had performed. The latter were entitled to these jobs, even if this required that the Respondent discharge employees then on its payroll. It is now found that, in not offering immediate employment to Cirillo, Chimenti, Gibaldo and Santamaria, as required by the earlier decision of the Board, the Respondent violated Section 8(a)(3) and (1).

On June 3, when Schifano met Bonanno at the Adams Iron Works and on June 26, when Colavito and Schifano met with Bonanno and his counsel, the Employer told the union representatives that he could not operate his shop with all the employees in the appropriate unit and in the Union. Thus, Bonanno revived the argument which the Respondent had used in the earlier case and which the Board had rejected in its decision of the matter. In view of Bonanno's position at this meeting and the facts surrounding the Respondent's failure to offer reinstatement to the unfair labor practice strikers, as found above, it is now found that this course of conduct on the Employer's part was due to the participation of Cirillo, Chimenti, Gibaldi and Santamaria in the strike

and that the Respondent's purpose was to undermine the Union and destroy its status as the majority representative. Consequently, it is now found that the Respondent's action in denying immediate reinstatement to these four employees violated Section 8(a)(5), as well as Section 8(a)(3) and (1). Moreover, it was likewise a violation of Section 8(a)(5) by the Respondent for Bonanno to insist throughout this period in June 1974, and thereafter, that any contract negotiated with the Union could not apply to all the employees and to tell Colavito, as he did on June 26, that the Union should agree to represent only half of his employees. *Ford Motor Company v. Huffman*, 345, U.S. 330, 337 (1953); *Southwestern Pipe, Inc.*, 179 NLRB 364, 375-376 (1969).

The Issue as to the Contract Executed on May 29, 1974; Contentions of the Parties; Findings and Conclusions in connection therewith

It is undisputed that on May 29, 1974, D'Angelo signed a collective-bargaining agreement, purportedly as the person authorized by the Respondent to sign. The General Counsel contends that the Respondent, by its conduct in the period prior to that date, gave D'Angelo the actual or apparent authority to execute this agreement and, therefore, is bound to abide by his action. This is denied by the Respondent, according to whom D'Angelo had no authority, express or implied, to sign a contract on its behalf.

D'Angelo testified that he had operated a catering business in Brooklyn for 27 years. According to him, he had no connection with the Respondent other than that he had been a personal friend of Bonanno for a long period of time. Bonanno had only a limited capability with the English language. This was evident at the hearing when some consideration was given to whether an interpreter should be used in taking his testimony. According to D'Angelo, because of Bonanno's difficulty with the language, at sometime in the spring

of 1974, Bonanno asked that he help in the negotiations that were about to begin with Local 455. D'Angelo conceded that he met with Colavito and Schifano on May 8 and May 26, 1974, and his testimony as to those meetings corroborated in substantial measure that given by the union representatives, as found above. He also conceded that he had signed the draft of the contract which was executed by Colavito and by him on May 26. On the other hand, he averred that he had no recollection of any meeting with Colavito late in March, as the latter testified, and he denied that he had any authorization from Bonanno to execute a binding agreement. D'Angelo further testified that throughout the negotiations with the Union he did not consult with Bonanno or inform him of the progress or substance of the negotiations until after the contract was signed because, as far as he was concerned, nothing was definite until an agreement had been finalized.

At the time of the hearing, D'Angelo was a person in middle age who apparently had been a successful businessman for many years. He was poised, articulate and, in contrast with his friend Bonanno, had no difficulty whatsoever in expressing himself in excellent English. He asserted that he had had no prior experience in negotiating labor agreements. In that respect he was completely credible. On the other hand, he was not credible when he testified that he had no contact with Bonanno during that period in May when he was meeting with the Union. In view of his admitted and apparent lack of familiarity with collective-bargaining negotiations it is wholly implausible that without consulting Bonanno he would have proposed on May 8 that the Union cut the contract rate for Friday and Saturday work from double to time and a half, change the clause on apprentices and laborers so as to allow a ratio of laborers equal to 50 percent of the work force, and eliminate the existing provision on laborers handling tools, or that at the meeting on May 29 he would have suggested that the proposed contract be amended

so that Bonanno himself would be classified as a working foreman and that the life of the agreement be extended from June 1975 to June 1977. It was undenied that after the May 8 meeting Colavito incorporated the first two changes mentioned above in a draft contract which he then gave to Attorney Schonfeld at the office of the latter. It is simply incredible that, before the next meeting with the union representatives, D'Angelo, contrary to his testimony, did not discuss with Bonanno the concessions which the Union had made and others which the Respondent would desire that D'Angelo endeavor to secure at the next conference. Based upon the foregoing considerations, as well as the respective demeanor of the witnesses at the time they testified it is the conclusion of the undersigned that, insofar as D'Angelo's testimony is at variance with that of Colavito and Schifano, the testimony of the latter two witnesses is more credible.

On May 8, after D'Angelo and Attorney Schonfeld had spent a substantial amount of time in negotiations with Colavito and Schifano, Bonanno and Attorney Gaba appeared on the scene. When the latter two endeavored to initiate a completely new discussion of the terms of a contract, Colavito protested that the Union would not attempt to deal with two bargaining teams. Gaba then volunteered to withdraw and Bonanno told the union officials "Okay, you work it out with Jack." Later that same morning and before the parties concluded their discussion, Bonanno reiterated this comment with the statement to Colavito "Look, work it out with Jack [D'Angelo]." At this point, and while still in the presence of Bonanno, D'Angelo told Colavito "Get those contracts to Schonfeld and as soon as [we] have a chance to look it over we will have another meeting." At the hearing, Bonanno did not dispute the testimony of Colavito and Schifano as to what he had said on the morning of May 8. He further corroborated the testimony of these witnesses when he himself testified that he told Colavito on that

occasion that he had asked D'Angelo "to help any way to see what deal could come out, give me a better deal, something [that would enable me] to survive, and then he come to me . . . . Later, Bonanno testified that he told Colavito "Talk to Jack, maybe you don't want to say to me something you want to say to him."

At no time on May 8, or later, did the Respondent ever notify the union officials that D'Angelo's authority was limited or that he was not authorized to sign a contract. At the meeting on May 29, and after the Union had made further concessions as to the final version of a contract, Colavito asked D'Angelo about Bonanno's absence from the conference. D'Angelo replied "Joe won't be here," but then added, in order to assure the Union as to the contract, "I'm going to sign, I'm a partner." This last remark was in keeping with an earlier comment which D'Angelo made to Colavito at their first meeting in March when he explained to the union representative that his interest in Adams Iron Works and Bonanno's problems stemmed from his [D'Angelo's] having a "piece of the business."

With this background the Union had reason to assume, as it did, that D'Angelo had full authority to conduct negotiations and finalize an agreement. In keeping with this assumption the Union made substantial concessions, enumerated above, to reach a contract. At the final meeting on May 29, when the union representatives questioned him as to whether he had the authority to sign an agreement he assured them that he did, adding "I'm a partner" and then, just before the actual execution of the document, Attorney Schonfeld assured them tnat D'Angelo had the authority to proceed.

After D'Angelo signed the agreement, to all appearances on the Respondent's behalf, Bonanno made no immediate claim that D'Angelo acted without authorization. On June 3, and 5 days after the execution of the contract, when Schifano came to the Respondent's shop, Bonanno did not contend

that D'Angelo had acted without authority. Instead he complained about D'Angelo's effectiveness by declaring "The kind of contract that that guy signed . . . I could have gotten myself, I didn't need him," and then went on to restate his long standing objection to having the Union act as the representative of any more than half of his employees. This latter objection was one which Bonanno had voiced to the Union at their meeting on May 8, and it was to be restated by him on June 26 when he met with the Union again, this time accompanied by his new counsel, Attorney Ferlaino. From the foregoing findings, it is evident, and the undersigned concludes, that Bonanno's concern was not with D'Angelo having acted without authority, but rather with his having brought back a contract with which the Respondent was dissatisfied. By this course of conduct, the Respondent manifested a complete rejection of the principle of dealing with the Union as the exclusive bargaining agent for its employees, and, in so doing, it violated Section 8(a)(5) and (1) of the Act.

The Respondent has contended, both at the hearing and in its brief, that it could not be bound by the contract bearing D'Angelo's signature because the latter was neither an officer, director, or stockholder, and was not acting in a representative capacity when he executed the agreement. In his brief, counsel for the Respondent has an excellent collection of cases, mostly from New York State, which establish that a principal may not be bound by the acts of an agent when the agent acts in excess of his actual authority or when a purported agent has no authority. These cases are interesting, but not of substantial relevance here.

Section 2(13) of the Act provides that:

> In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for is acts, the question of whether

> the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

Thus, the Board and the Courts have held, in deciding whether an employer and a union have agreed upon a contract, that they are not bound by the technical rules of contract law. *Lozano Enterprises v. N.L.R.B.*, 327 F.2d 814, 818 (C.A. 9, 1964). In *John Wiley & Sons v. Livingston*, 376 U.S. 543, 550 (1964), the Supreme Court held that a collective-bargaining agreement is not governed by the same common law concepts which govern private contracts, nor is it an ordinary agreement comparable to one for the purchase of goods and services. *Cf., United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 578-581 (1960); *Manor Research, Inc.*, 165 NLRB 909 (1967).

If an agent for one of the parties to collective-bargaining negotiations has only limited authority to negotiate a contract, this limitation must be disclosed to the other party before agreement is reached *N.L.R.B. v. Ralph Printing & Lithographing Co.*, 433 F.2d 1058, 1061 (C.A. 8, 1970), cert. denied 401 U.S. 925 (1971); *Teamsters, Chauffeurs, Warehousemen & Helpers Local Union 524 v. Billington Builders Supply*, 402 F.2d 510, 513 (C.A. 9, 1968); *United Steelworkers of America v. CCI Corp.*, 395 F.2d 529, 532 (C.A. 10, 1968), cert. denied 393 U.S. 1019 (1969); *San Luis Obispo County & Northern Santa Barbara Restaurant and Tavern Association, et al.*, 196 NLRB 1082, 1084, fn. 7 (1972). In *Aptos Seascape Corp.*, 194 NLRB 540 (1971), the Board stated (at 544):

> . . . . an agent appointed to negotiate a collective-bargaining contract is deemed to have apparent authority to bind his principal in the absence of notice to the contrary . . . . Whether or not this rule comports with "good technical contract rule"

> is not controlling. What is important is whether the rule states good collective-bargaining law . . . The rule, which imposes no hardship upon the principal, is dictated by the statutory policy of promoting industrial peace by encouraging collective bargaining. Clearly, the statutory policy would be thwarted by permitting a principal, after his agent has reached agreement, to state for the first time that the latter's authority was limited and that the agreement was subject to ratification.

From the time D'Angelo appeared on the scene and most particularly after Bonanno told union officials Colavito and Schifano that as to collective-bargaining negotiations they were to "work it out with Jack," Bonanno remained in the background. By this conduct the Employer clothed D'Angelo with ostensible authority to negotiate a final and binding agreement on his behalf, and the Union acted on that assumption. At no time during the negotiations did the Respondent give the Union any notice that D'Angelo's authority was limited. Consequently, when agreement was reached on all the terms of a contract, and D'Angelo signed the draft, the Respondent had the duty to implement it. *Aptos Seascape Corp., supra; Winchester Electronics, Inc., etc.*, 128 NLRB 1292, fn. 5 (1960); *Sprouse-Reitz Co., Inc.*, 195 NLRB 748, fn. 1 (1972); and cases cited *supra*. By refusing to honor the agreement which it had permitted D'Angelo to negotiate, the Respondent violated Section 8(a)(5) and (1) of the Act. Furthermore, the continuing refusal of President Bonanno to accept the Union as the representative of all employees in the unit, found appropriate in *Adams I*, manifests a complete rejection of the principle of dealing with the Union as the exclusive bargaining agent for

the employees, and by so doing, the Respondent has violated, and is continuing to violate, Section 8(a)(5) and (1) of the Act.

Conclusions of Law

1. The Company is an employer engaged in commerce and the Union is a labor organization within the meaning of Section 2(2), (5), (6) and (7) of the Act

2. All production and maintenance employees, including plant clericals, at the Respondent's plant, exclusive of office clericals, guards and supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

3. At all times material herein the Union has been the exclusive collective-bargaining representative of the Company's employees in the unit just described.

4. By its failure to reinstate the strikers to their former jobs after their unconditional application on June 13, 1974, and by its failure and refusal generally to bargain collectively in good faith with the Union subsequent to May 8, 1974, as to the wages, hours, and working conditions of its employees in the unit set out above, the Respondent violated Section 8(a)(5), (3) and (1) of the Act.

5. By refusing to honor and comply with the terms of the collective-bargaining agreement executed by its agent on May 29, 1974, the Respondent has violated Section 8(a)(5) and (1) of the Act.

6. The unfair labor practices found herein affect commerce as defined in the Act.

7. The Respondent did not discriminatorily refuse to reinstate John Mazzanti.

The Remedy

Having found that the Respondent engaged in unfair labor practices, it will be recommended that it be ordered to cease and desist therefrom and that

it take certain affirmative action designed to effectuate the purposes of the Act.

Since it has been found that the Respondent has failed to implement the collective-bargaining agreement which its agent executed on May 29, 1974, it will be recommended: that the Respondent be required to honor and comply with the terms of that agreement; that it give effect to such contract retroactively to May 29, 1974; and that it make whole its employees for any loss of wages or other employment benefits they may have suffered as a result of the Respondent's refusal to abide by the terms of this agreement.

As to T. Gibaldi and Vito Chimenti, who have not heretofore been reinstated, it will be recommended that the Respondent offer immediate and full reinstatement to their former jobs or substantially equivalent employment and make each of them whole for any loss of earnings they may have suffered by the Respondent's refusal, on and after their unconditional application for reinstatement on June 13, 1974, to the date of a valid offer of reinstatement. As to Antonio Cirillo and Gaspare Santamaria it will be recommended that the Respondent be required to make them whole for any loss of earnings they may have suffered from June 13, 1974, to the date they received a valid offer of reinstatement.

All losses of earnings under the terms of this recommended order shall be computed in the manner set forth in *F.W. Woolworth Company*, 90 NLRB 289 (1950), and *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, there is issued the following recommended: [13]

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[13] In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and all objections shall be deemed waived for all purposes.

ORDER

The Respondent, Adams Iron Works, Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively in good faith concerning rates of pay, wages, hours of employment, and other terms and conditions of employment with Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, as the exclusive representative of the employees in the following appropriate unit:

> All production and maintenance employees, including plant clericals, at the Respondent's Brooklyn, N.Y., plant, exclusive of office clericals, guards and supervisors.

(b) Refusing to comply with all terms and conditions of the collective-bargaining agreement between the Respondent and the aforesaid Union executed on May 29, 1974.

(c) In any other manner interfering with, restraining or coercing its employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed by Section 7 of the Act, or to refrain from any or all such activities.

2. Take the following affirmative action designed and found necessary to effectuate the policies of the Act:

(a) Recognize Local 455 as the exclusive collective-bargaining representative of its employees covered by the May 29, 1974, contract between it and Local 455, bargain with the aforesaid union at its request and make it whole for any losses it may have suffered by virtue of the Respondent's refusal to honor that contract.

(b) Make whole, in the manner set out in the "remedy" section of this Decision, all employees within the unit covered by that contract for

any losses they may have suffered by virtue of the Respondent's refusal to honor that contract.

(c) Comply with all the terms and conditions of the May 29, 1974, contract both retroactively and for the balance of its terms except and to the extent such compliance is affected by law.

(d) Offer to T. Gibaldi and Vito Chimenti immediate and full reinstatement to their former or substantially equivalent employment with the Respondent and make each of them whole in the manner set forth in the "Remedy" section of this Decision, for any loss of earnings they may have suffered.

(e) Make whole Antonio Cirillo and Gaspare Santamaria for any loss of earnings they may have suffered in the manner set forth in the "Remedy" section of this Decision.

(f) Preserve and, upon request, make available to authorized agents of the Board, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at its shop in Brooklyn, New York, copies of the attached notice marked "Appendix"[14] Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by the Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced or covered by any other material.

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[14] In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(h) Notify the Regional Director for Region 29, in writing, within 20 days from the date of the receipt of this Decision, what steps the Respondent has taken to comply herewith.

IT IS ALSO ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found herein.

Dated at Washington, D.C.

/s/ Robert E. Mullin
Robert E. Mullin
Administrative Law Judge

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APPENDIX JD-146-75

FORM NLRB-4727
(9-69)

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL recognize Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

> All production and maintenance employees, including plant clericals, at our Brooklyn, N.Y., plant, exclusive of office clericals, guards and supervisors.

WE WILL meet and bargain with Local 455, at its request, concerning the wages, rates of pay, hours and working conditions of the employees in the unit just described.

WE WILL make Local 455 whole for any losses it may have suffered by virtue of our refusal to honor the May 29, 1974, contract.

WE WILL comply with all the terms and conditions of the May 29, 1974, contract both retroactively and for the balance of its term except and to the extent such compliance is affected by law.

WE WILL offer to T. GIBALDI and VITO CHIMENTI immediate and full reinstatement to their former jobs, dismissing, if necessary, any person hired as their replacements, and make them whole for any wages lost by reason of our failure to reinstate them originally upon their unconditional application.

WE WILL make whole ANTONIO CIPCILLO and GASPARE SANTAMARIA for any wages lost by reason of our failure to reinstate them originally upon their unconditional application.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the aforementioned Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8(a)(3) of the Act.

ADAMS IRON WORKS, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street - 4th Floor, Brooklyn, N.Y., 11241 (Tel. No. 212 - 596-3535).

[dated October 23, 1975]

* * * * *

DECISION AND ORDER

On March 28, 1975, Administrative Law Judge Robert E. Mullin issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge to the extent consistent herewith and to adopt his recommended Order as modified herein.

The complaint alleges, *inter alia,* that Respondent violated Section 8(a)(5), (3), and (1) by its failure and refusal to reinstate John Mazzanti. The General Counsel concedes that Mazzanti was discharged for reasons unrelated to the unfair labor practice strike which occurred at Respondent's Brooklyn, New York, premises, and thus was not entitled to the rights of an unfair labor practice striker. In addition, there is no evidence that Respondent's refusal to reinstate Mazzanti was in any way caused by his posttermination participation in the strike. Accordingly, we agree with the Administrative Law Judge's dismissal of the 8(a)(3) and (1) allegation as to Mazzanti.

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[1] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.,* 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

However, we find, contrary to the Administrative Law Judge's dismissal of the additional 8(a)(5) and (1) allegation as to Mazzanti, that Respondent reneged on its May 29, 1974, agreement to reinstate Mazzanti and thereby violated the Act. We rely on the uncontradicted testimony of Union Representatives Colavito and Schifano that Jack D'Angelo, on behalf of Respondent, agreed to Mazzanti's reinstatement. Since we have adopted the Administrative Law Judge's finding that D'Angelo had authority to bind Respondent to the collective-bargaining agreement executed on May 29, 1974, we find that D'Angelo had similar authority to agree, on behalf of Respondent, to reinstate Mazzanti. On June 3, 1974, when Mazzanti returned to Respondent's shop accompanied by Schifano, Respondent's President Bonanno repudiated the agreements entered into by D'Angelo on May 29. We find that Respondent violated Section 8(a)(5) and (1) of the Act by reneging on its agreement to reinstate Mazzanti. Accordingly, we shall require Respondent to honor and comply with the terms of that agreement.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge as modified below, and hereby orders that the Respondent, Adams Iron Works, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following paragraph after paragraph 2(d) and reletter the subsequent paragraphs accordingly:

"(e) Offer to John Mazzanti immediate and full reinstatement and make him whole for any loss of earnings he may have suffered from June 2, 1974, in the manner set forth in the "Remedy" section of the Administrative Law Judge's Decision.

2. Substitute the attached notice for the Administrative Law Judge's notice.

Dated, Washington, D.C. October 23, 1975

Betty Southard Murphy, Chairman

Howard Jenkins, Jr., Member

John A. Penello, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL recognize Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL—CIO, as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

> All production and maintenance employees, including plant clericals, at our Brooklyn, New York, plant, exclusive of office clericals, guards and supervisors as defined in the Act.

WE WILL meet and bargain with Local 455, at its request, concerning the wages, rates of pay, hours and working conditions of the employees in the unit just described.

WE WILL make Local 455 whole for any losses it may have suffered by virtue of our refusal to honor the May 29, 1974, contract.

WE WILL make whole all employees within the above-described unit for any losses they may have suffered by virtue of our refusal to honor the aforementioned contract.

WE WILL comply with all the terms and conditions of the May 29, 1974, contract both retroactively and for the balance of its terms except and to the extent such compliance is affected by law.

WE WILL offer to T. Gibaldi and Vito Chimenti immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, dismissing, if necessary, any person hired as their replacements, and make them whole for any wages lost by reason of our failure to reinstate them originally upon their unconditional application.

WE WILL offer to John Mazzanti immediate and full reinstatement and make him whole for any wages lost by reason of our failure to honor our agreement to reinstate him.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the aforementioned Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8(a)(3) of the Act.

ADAMS IRON WORKS, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241. Telephone 212—596—5386.

GENERAL COUNSEL'S
EXHIBIT 1(a)

FORM NLRB-501
(2-67)

Form Approved
Budget Bureau No. 64-R001.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 29-CA-3965

Date Filed 8-15-74

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: Adams Iron Works, Inc.

b. Number of Workers Employed: 9

c. Address of Establishment (Street and number, city, State, and ZIP code): 78 Butler Street, Brooklyn, N.Y.

d. Employer Representative to Contact:

e. Phone No.:

f. Type of Establishment (Factory, mine, wholesaler, etc.): Factory

g. Identify Principal Product or Service: Metal Fabricator

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) (5) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about June 3, 1974, the Company has refused to bargain in good faith with the undersigned Union in that, after agreeing to the terms of a collective bargaining agreement with the Union and signing the same on May 28th, 1974, it thereafter, on or about June 3, 1974 repudiated the same and refused to abide by any of its terms.

Refusal since on or about June 3, 1974 to reinstate employee John Mazzanti upon his unconditional application to return to work, in violation of the Company's agreement with the Union and the Board's order in Case #29 CA 3596.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number): Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO

4a. Address (Street and number, city, State, and ZIP code): 853 Broadway, New York, N.Y. 10003

4b. Telephone No.: GR. 5-2226

5. Full Name of National or International Labor Organization of which it is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization): International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By [signature] (Signature of representative or person filing charge) Attorney (Title, if any)

SIPSER, WEINSTOCK, HARPER & DORN

Address 380 Madison Avenue, New York, N.Y. 10017

867-2100 (Telephone number)

August 13, 1974 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 861-475

GENERAL COUNSEL'S
EXHIBIT 1(c)

[dated October 31, 1974]

* * * * *

COMPLAINT AND NOTICE OF HEARING

It having been charged by Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, herein called the Union, that Adams Iron Works, Inc., herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for Region 29, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations — Series 8, as amended, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. The Charge in this proceeding was filed by the Union on August 15, 1974, and served by registered mail upon Respondent on or about August 15, 1974.

2. Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

3. At all times material herein, Respondent has maintained its principal office and place of business at 78 Butler Street, in the Borough of Brooklyn, City and State of New York, herein called the Butler plant, where it is, and has been at all times material herein, engaged in the fabrication and installation of iron railings and related products.

4. During the past year, which period is representative of its annual operations generally, Respondent, in the course and conduct of its business, purchased and caused to be transported and delivered to its Butler plant, iron and other goods and materials valued in excess of $50,000, of which

goods and materials valued in excess of $50,000 were transported and delivered to it, and received from, other enterprises located in the State of New York, each of which other enterprises had received the said goods and materials in interstate commerce directly from states of the United States other than the state in which it is located.

5. Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

6. The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

7. (a) Joseph Bonanno is, and has been at all times material herein, the president of Respondent, acting on its behalf, and an agent thereof.

(b) Jack D'Angelo is, and has been at all times material herein, an agent of Respondent acting on its behalf.

8. All production and maintenance employees, including plant clerical employees of Respondent employed at its Butler plant, exclusive of office clerical employees, guards and all supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

9. At all times material herein, the Union, by virture of Section 9(a) of the Act, has been, and is now, the exclusive representative of all the employees in the unit described above in paragraph 8 for the purposes of collective bargaining.

10. On or about July 2, 1973, the employees of Respondent named below stopped work concertedly and went out on strike to protest the unfair labor practices of Respondent and were found by the Board to be unfair labor practice strikers in its Decision and Order in Case No. 29-CA-3596 issued on April 29, 1974:

Antonio Civello	T. Gibaldi
Gaspare Santamaria	Vito Chimenti

11. On or about June 13, 1974, the employees of Respondent named above in paragraph 10, made unconditional offers to Respondent to return to work and to their positions of employment.

12. Since on or about June 13, 1974 and continuing to date, Respondent has refused to reinstate the employees named above in paragraph 10, as well as employee John Mazzanti, to their former or substantially equivalent positions of employment.

13. (a) On May 29, 1974, following collective bargaining negotiations, Respondent, by Jack D'Angelo, its agent, executed a collective bargaining agreement covering wages, hours and other terms and conditions of employment with the Union covering employees in the unit described above in paragraph 8.

(b) During the course of said negotiations, Respondent agreed to reinstate John Mazzanti, a former employee.

14. Since on or about June 3, 1974, Respondent has failed and refused to honor and abide by its collective bargaining agreement with the Union, described above in paragraph 13, and with its agreement to reinstate Mazzanti.

15. Since on or about June 3 and June 26, 1974, Respondent has conditioned honoring and abiding by the contract on the Union agreeing to represent for the purposes of collective bargaining only half of Respondent's unit employees.

16. Respondent engaged in the conduct described above in paragraphs 12, 14 and 15 because its employees participated in the strike described above in paragraph 10, because Mazzanti and the other employees were members of and assisted and supported the Union, and in order to undermine the Union and to destroy its majority status among the employees in the unit described above in paragraph 8.

17. By the acts described above in paragraph 12, 14 and 15, and by each of said acts, Respondent interfered with, restrained and coerced, and is interfering with, restraining and coercing, its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

18. By the acts described above in paragraphs 12 and 14, and by each of said acts, Respondent discriminated, and is discriminating, in regard to the hire and tenure and terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and thereby engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

19. By the acts described above in paragraphs 12, 14 and 15, and by each of said acts, Respondent refused to bargain collectively, and is refusing to bargain collectively, with the representatives of its employees, and thereby engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

20. The acts of Respondent described above in paragraphs 12, 14 and 15, occurring in connection with the operations of Respondent, described above in paragraphs 2 through 5, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 4th day of December, 1974, at 10:00 a.m., at 16 Court Street, fourth floor, in the Borough of Brooklyn, City and State of New York, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place

you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures In Formal Hearings Held Before The National Labor Relations Board in Unfair Labor Practices Cases, is attached.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Complaint within ten (10) days from the service thereof, and that unless it does so, all the allegations in the Complaint shall be deemed to be admitted by it to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Brooklyn, New York, this 31st day of October, 1974

/s/ Samuel M. Kaynard

Samuel M. Kaynard
Regional Director, Region 29
National Labor Relations Board
16 Court Street
Brooklyn, New York 11241

FORM NLRB-4668
(1-73)

(C CASES)

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The hearing will be conducted by an Administrative Law Judge of the National Labor Relations Board. He will preside at the hearing as an independent, impartial trier of the facts and the law and his decision in due time will be served on the parties. His headquarters are either in Washington, D.C. or San Francisco, California.

At the date, hour, and place for which the hearing is set, the Administrative Law Judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to assure that the issues are sharp and clear-cut; or he may, on his own initiative, conduct such a conference. He will preside at any such conference, but he may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record -- for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the Administrative Law Judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or to make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the Administrative Law Judge for his approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Administrative Law Judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Administrative Law Judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Administrative Law Judge will allow an automatic exception to all adverse rulings, and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies shall also be supplied to other parties. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy before the close of hearing. In the event such copy is not submitted, and the filing thereof has not for good reason shown been waived by the Administrative Law Judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Administrative Law Judge may himself ask for oral argument, if at the close of the hearing he believes that such argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Administrative Law Judge who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the Administrative Law Judge will be considered unless received by the Chief Administrative Law Judge in Washington, D. C. (or in cases under the San Francisco, California branch office of the Division of Judges, the Presiding Judge in charge of such office) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously upon all other parties, and proof of such service furnished to the Chief Administrative Law Judge or Presiding Judge as the case may be. All briefs or proposed findings filed with the Administrative Law Judge must be submitted in triplicate, and may be in typewritten, printed, or mimeographed form, with service upon the other parties.

In due course the Administrative Law Judge will prepare and file with the Board his decision in this proceeding, and will cause a copy thereof to be served upon each of the parties. Upon filing of the said decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, upon all parties. At that point, the Administrative Law Judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the Administrative Law Judge's Decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 8, as amended, particularly in Section 102.46, and following sections. A summary of the more pertinent of these provisions will be served upon the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce government expenditures and promote amity in labor relations. Upon request, the Administrative Law Judge will afford reasonable opportunity during the hearing for discussions between the parties if adjustment appears possible, and may himself suggest it.

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GPO 941-799

GENERAL COUNSEL'S EXHIBIT 1(e)

[dated November 19, 1973]

* * * * *

ANSWER

The respondent herein, by its attorneys, Ferlaino & Fusco, Esqs., hereby appears in the above captioned proceeding and for its answer, alleges as follows:

1. Denies each and every allegation contained in paragraph "1" of the complaint, except admits that respondent received a registered mail notification on or about August 15th, 1974.

2. Denies each and every allegation contained in paragraph "3" of the complaint, except admits that the respondent operates an iron works shop at No. 78 Butler Street, Brooklyn, New York.

3. Denies knowledge or information as to the allegations contained in paragraph "4" of the complaint, except admits that respondent has purchased ornamental iron and other materials necessary for its business within the State of New York and on information and belief, without knowledge as to the Interstate Commerce sales alleged in paragraph "4".

4. Denies knowledge or information as to the allegations contained in paragraph "5" of the complaint, except admits that the respondent conducts an iron works shop at 78 Butler Street, Brooklyn, New York, and sells and installs ornamental iron work and related iron materials.

5. Denies the allegation contained in paragraph "6" of the complaint.

6. Denies each and every allegation contained in paragraphs "7(b)", "9", "13(a) and (b)", "14", "15", "16", "17", "18", "19" and "20" of the complaint.

7. Denies knowledge or information as to the allegations contained in paragraph "8" of the complaint.

8. Denies each and every allegation contained in paragraphs "10", "11" and "12" of the complaint, except states that the union requested the hiring of employees by the respondent at the salaries, terms and conditions dictated by the union, which the respondent advised it was not in a position to accept for the reasons advised the union.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

9. The respondent never refused to negotiate with the union and did negotiate with the union on June 26, 1974, long after the alleged acts set forth in paragraphs "13", "14", "15", "16", "17", "18", "19" and "20", at which meeting the union, in the presence of witnesses, stated it would not modify any proposed contract with the respondent in any respect. The respondent also at said time advised the union that it had no position available for any employees, union or otherwise, at said time.

Rather than the union being destroyed in its majority status, as alleged in paragraph "16", the union attempts to destroy the respondent. It is a matter of court record that some agent or employee of the union, on information and belief, in the act of attempting to destroy respondent's business, did seriously knife and seriously injure the president of the respondent and said person thereafter did appear in a criminal court and, upon information and belief, pleaded guilty for seriously injuring respondent's president by knifing him near the heart.

WHEREFORE, respondent respectfully requests that the charges and complaint of the union the the Labor Board be in all respects dismissed.

Dated: Garden City, New York
November 18, 1974

FERLAINO & FUSCO
Attorneys for Respondent
500 Old Country Road
Garden City, New York
516–747-8500

TO: NATIONAL LABOR RELATIONS BOARD
16 Court Street
Brooklyn, New York

TO: SIPSER, WEINSTOCK, HARPER & DORN, ESQS.
Attorneys for Local 455, International
Association of Bridge, Structural and
Ornamental Iron Workers, AFL-CIO
380 Madison Avenue
New York, N. Y. 10017

GENERAL COUNSEL'S EXHIBIT 2

A G R E E M E N T

between

SHOPMEN'S LOCAL UNION NO. 455

of the

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS

(Affiliated with A.F.L.-C.I.O.)

and

Adams Iron Works Inc
Name of Company

Nyc
City

Ny
State

Effective Date May 29, 1977

A G R E E M E N T

THIS AGREEMENT, executed and effective as of the 29th day of May, 1974, by and between

Adams Iron Works Inc
(Name of Company)

(Street Address)

(City) (State)

(including its successor or assigns), hereinafter referred to as the "Company", and Shopmen's Local Union No. 455 of the International Association of Bridge, Structural and Ornamental Iron Workers (AFL-CIO), hereinafter referred to as the "Union", as the agent for and acting in behalf of the Company's production and maintenance employees, as the terms "production and maintenance employees" are defined in Section 1 hereof.

Should the Company sell its plant or plants covered by this Agreement to a Company which does not have a contract with the Union, or should the Company sell or merge its plant or plants or operations with a Company which does not have a contract with the Union, the purchaser of such plant or plants, and/or the merged Company shall abide by the terms set forth in this Agreement, beginning with the date of purchase or merger until this Agreement expires.

Should the Company move its plant or plants to a new location or locality outside the Metropolitan area, or merge its operations with those of another Company located outside the Metropolitan area which does not have a contract with the Union, or sell its operations to a Company located outside the Metropolitan area which does not have a contract with the Union, the Company, merged Company, or purchaser shall continue to be bound by the terms of this agreement until its expiration date.

WITNESSETH THAT THE PARTIES HAVE AGREED AS FOLLOWS:

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SECTION 7

OVERTIME PAY

(A) The first one-half (1/2) hour of work immediately following the end of the basic workday shall be compensated for at the regular straight time hourly rate.

(B) All work done by an employee before or after the regular work hours of any shift (i.e., eight (8) hours for the first shift and seven (7) hours for all other shifts), or of the regular workweek, shall be paid for at overtime rates as hereinafter provided.

(C) Overtime pay shall be computed as follows: Overtime rates for work performed Monday through Friday shall be paid for at the rate of time and one-half for the first two (2) overtime hours and thereafter at the rate of double-time. All work performed on Saturday shall be paid for at the rate of time and one-half.

(D) All work performed on Sunday shall be paid for at the rate of double-time, it being understood that no work shall be performed on Saturdays or Sundays, except as provided in Subsection (F) below.

(Section 7 continued on page 7-a)

SECTION 24

WAGE RATES AND CLASSIFICATIONS

(A) Each employee shall be classified in that one of the hereinafter specified classifications which covers the work operation(s) such employee performs.

(B) Effective May 29, 1974, the wage rates of employees classified as "Foremen" and "Finishers" shall be increased forty-five ($.45) cents per hour, and effective July 1, 1974, the wage rate of all employees classified as "Foremen" and "Finishers" shall be increased fifty ($.50) cents per hour.

(C) Effective May 29 1974, the wage rates of employees classified as "Mechanics" shall be increased forty ($.40) cents per hour, and effective July 1, 1974, the wage of all employees classified as "Mechanics" shall be increased forty-five ($.45) cents per hour.

(D) Effective May 29, 1974, the wage rates of employees classified as "Shop Helpers" shall be increased thirty-five ($.35) cents per hour, and effective July 1, 1974, the wage rate of all employees classified as "Shop Helpers" shall be increased forty ($.40) cents per hour.

There shall be at least one Foreman in each shop, and Foremen who perform work with tools shall comply with the

(Section 24 continued on page 24-a)

Section 24. (Continued)

provisions of Section 4, Subsection (A) of this Agreement with respect to membership in the Union and shall be paid not less than sixty ($.60) cents per hour above the hourly rate hereinafter specified for the classification of "Finishers", [redacted]

(E) The minimum hourly rates shall be as set forth below:

	Effective [redacted] 5/24/77	Effective 7/1/74
FINISHERS Who work from drawings and sketches and at least one (1) Finisher shall be employed for each nine (9) Mechanics	$ 6.60	$ 7.10
MECHANICS Employees classified in this classification shall not be permitted to work from blue prints, drawings or sketches	5.85	6.25
SHOP HELPERS	5.25	5.65

Past practices established by custom (which are not in violation of the provisions of this Agreement) regarding the work covered by the foregoing classifications shall be maintained.

(F) Any employee receiving more than the minimum rate hereinabove specified for his or her classification shall not be reduced.

(Section 24 continued on page 24-b)

Section 24. (Continued)

(G) The following provisions shall apply to new inexperienced Shop Helpers:

	Effective [redacted] 1/24/14	Effective 7/2/14
Start	$ 4.05	$ 4.45
After 6 months	4.25	4.65
After 1 year	4.45	4.85
After 1-1/2 years	4.65	5.05
After 2 years	4.85	5.25
After 2-1/2 years	5.05	5.45
After 3 years	5.25	5.65

All inexperienced [redacted] Helpers shall be paid in accordance with their previous length of service in accordance with the above schedule.

A new inexperienced [redacted] Helper shall not be employed so long as there is any available for employment who was previously employed under the jurisdiction of the Union, irrespective of the firm by which such [redacted] Helper was previously employed.

The number of [redacted] Helpers employed by the Company shall at no time exceed 50% of the work force covered by the terms of this Agreement.

Inexperienced [redacted] Helpers shall be obliged to attend classes stipulated and approved under the Apprenticeship Program for four (4) hours, once each week during regular working hours and accordingly, shall be given time off for such purpose. Any inexperienced [redacted] Helper who refuses or fails to attend classes under the rules of the Apprenticeship Fund shall be terminated as a [redacted] Helper and shall be subject to discharge or other disciplinary action. No more than twenty-five (25%) per cent

(Section 24 continued on page 24-c)

Section 24. (Continued)

of the inexperienced ~~Shop~~ Helpers employed by a Company shall attend classes at any one time. In shops that employ under four (4) ~~Shop~~ Helpers, no more than one (1) ~~Shop~~ Helper shall attend class at any one time. ~~Shop~~ Helpers shall be considered employees of the Apprenticeship Fund during their attendance at the said classes, and while in transit between their shop and the said classes, and shall receive their pay for the four (4) hours lost from work from the Fund, provided they attend said classes.

(H) It is specifically understood and agreed that any conditions of employment or benefits applicable to employees, existing in the Company's plant, which are not specifically provided for in this agreement and which are more beneficial to the employees than the terms and conditions set forth in this agreement, shall be continued in full force and effect during the terms of this agreement, notwithstanding any provision contained in this agreement to the contrary.

(I) It is agreed that the wage rates and classifications set forth below are for the fabrication of miscellaneous ornamental iron works in one and two family houses. It is further agred that if the Company fabricates the regular commercial miscellaneous ornamental iron works for commercial, city, state or federal buildings the employer will pay the wage rate set forth in the agreement between Shopmen's Local Union No. 455 and the Allied Building Metal Industries.

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SECTION 33

TERMINATION

This agreement shall become effective as of the 19th day of May, 19[illegible] and shall remain in full force and effect until midnight June 30, 1977; and unless written notice of a desire for change therein or to terminate the same be given by either party to the other at least sixty (60) days and not more than ninety (90) days prior to such expiration date, it shall continue in effect for an additional year thereafter. In the same manner, this agreement shall remain in effect from year to year thereafter, subject, however, to the right of each party to terminate it at the expiration of any such year by giving notice, in writing, to the other party at least sixty (60) days and not more than ninety (90) days prior to the expiration of such year. Should notice of termination be served, or notice of a desire for change therein be served by either party, it is agreed that a conference shall be held on the first Tuesday in May of the year such notice is served, unless some other date is mutually agreed upon.

(Section 33 continued on page 33-a)

parties agree that this contract is for 3 years from date & provided that the Company shall pay all increases, funds and fringe benefits that will be negotiated in the standard industry contracts following the contract that expires June 30, 1975.

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Section 33. (Continued)

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 24 day of May. 19 24, in the City of New York.

SHOPMEN'S LOCAL UNION NO. 455

By _____
President

By _____
Recording Secretary

_____
(Name of Company)

By _____
(Person authorized to sign)

APPROVED AS TO FORM:

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS

By _____
(Official authorized to sign)

_____
(Title)

GENERAL COUNSEL'S EXHIBIT 3

[Letterhead]

June 11, 1974

President
International Ass'n of Bridge, Structural
& Ornamental Iron Workers, AFL-CIO
Shopmen's Local Union No. 455
853 Broadway
New York, N. Y. 10011

Re: Adams Iron Works, Inc.

Dear Sir:

This office represents the above referenced party. Heretofore, you have negotiated with Mr. Joseph Bonanno, president of Adams Iron Works, Inc., and one Richard L. Gaba, Esq., with reference to certain labor difficulties arising between the above corporation and your union.

We have been advised that some person purporting to represent Adams Iron Works, Inc. executed a contract covering union matters with your organization. We hereby advise you that any such person did so without any authority and was not an officer, director, agent or employee of Adams Iron Works, Inc. and that any such agreement is not binding on our client.

For your information, there is only one officer authorized to act on behalf of Adams Iron Works, Inc. and that is Joseph Bonanno, the president thereof.

If you are desirous to discuss union matters affecting Adams Iron Works, Inc., the writer and Mr. Bonanno shall be pleased to meet with you with respect to same. Please communicate your desires by letter and we will respond properly.

Very truly yours,
FERLAINO & FUSCO

by JOHN C. FERLAINO
John C. Ferlaino

JCF:dc

GENERAL COUNSEL'S EXHIBIT 4

July 1, 1974

Shopmen's Local Union No. 455
853 Broadway
New York, N. Y. 10003

Att: Mr. William Celavito, President

Re: Adams Iron Works, Inc.

Dear Sir:

This office represents Adams Iron Works, Inc. Following our conference of Wednesday, June 26th, 1974, at the office of Adams Iron Works, Inc., I spent several hours reviewing the contract that you proposed for our client.

Our client finds it impossible to consider the contract. If you are disposed to offer substantial and far reaching modifications in the benefits and also wage rates, and other items, then we are disposed to discussing same with you.

This letter is written and sent to you without prejudice to all of the right of our client.

Very truly yours,

FERLAINO & FUSCO

by
John C. Ferlaino

JCF:dc

GENERAL COUNSEL'S EXHIBIT 5

[Letterhead]

June 13, 1974

Adams Iron Works, Inc.
78 Butler St.
Brooklyn, N. Y.

Att: Joe Bonono:

Dear Sir:

On behalf of the following employees to wit:

John C. Mazzanti	Gaspare Santamaria
Giovani Cirillo	T. Gibaldi
Antonio Civello	Vito Chimento

and Nick Sorrentino, this letter shall serve as an unconditional application on behalf of each employee to return to work to their former position.

Please contact the undersigned to arrange for said employees to return to work.

In the event that you do not respond forthwith we will have no alternative but to file unfair labor charges with the N.L.R.B.

Very truly yours,

/s/ JOHN ZITO
John Zito
Financial Sec'y Treas.

JZ:rm
oeiu:153

Certified mail return receipt requested.

GENERAL COUNSEL'S EXHIBIT 6

[dated March 26, 1974]

* * * * *

DECISION

Statement of the Case

SAMUEL ROSS, Administrative Law Judge: This case was tried before me in Brooklyn, New York, on January 16 and 17, 1974. The charge in this case was filed by the above-named Union on Ocrober 17, 1973, and a complaint based thereon issued on December 21, 1973, against the above-named Company (herein called Respondent) which alleges that the Respondent engaged in unfair labor practices within the meaning of Sections 8(a)(5) and (1) and Sections 2(6) and (7) of the Act. Specifically, the complaint alleges that the Respondent negotiated in bad faith with the Union, the collective bargaining representative of its employees in an appropriate unit, by premising the reaching of any agreement by it upon the Union's agreement to certain nonmandatory and illegal conditions precedent. The Respondent filed an answer which denies the substantive allegations of the complaint and the commission of unfair labor practices.

Upon the entire record, and my observation of the witnesses and their demeanor, and after due consideration of the briefs filed by the General Counsel and the Respondent, I make the following:

Findings of Fact

I. Commerce

The Respondent, a New York corporation whose principal office and place of business is located in Brooklyn, New York, is engaged in the business of fabricating and installing ornamental iron railings and related products. During the past year, a representative period, Respondent purchased and received iron and other materials valued in excess of $50,000 from enterprises

located in the State of New York, which had been delivered to the said enterprises directly from states other than the State of New York. Based on the foregoing admitted facts, the Respondent concedes, and I find that it is engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. The Labor Organization Involved

It also is not disputed, and I find, that Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (herein called the Union), is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Appropriate Unit

Since 1964, the Respondent has recognized the Union as the exclusive collective bargaining representative of its production and maintenance employees pursuant to successive contracts, the most recent of which expired on June 30, 1973.[1] One of the issues in this case is whether the Union is the representative of the Respondent's "outside" employees who install the railings and other products fabricated in its shop. The specific language of the parties' last contract in respect to the appropriate unit was as follows:

> All production and maintenance employees including plant clericals (sic) employees of the Company (hereinafter referred to as 'employees') engaged in the fabrication and/or manufacture of all ferrous and non-ferrous metals, iron, steel, and other metal products, including plastic products, also all maintenance employees of the Company engaged in maintaining machinery and equipment and other maintenance work in or about the

[1] All dates hereinafter will refer to 1973 unless othewise noted.

> Company's shop or shops, and to work done by such production and maintenance employees. This agreement is not intended and shall not be construed to extend to office clerical employees, superintendents, or to employees who are represented by any other union affiliated with the AFL-CIO with whom the Company has signed a collective bargaining agreement. This agreement is not intended and should not be construed to extend to erection, installation or construction work, or to employees engaged in such work.[2]

The last collective bargaining agreement between the Respondent and the Union also contained other provisions relative to erection and construction work. Thus, Section 21, p. 21, provided:

> ERECTION AND FIELD FABRICATION
>
> The provisions of this agreement shall be applicable only to the employees of the Company comprising the bargaining unit described and set forth in Section 1 hereof, and to work done by such employees as described and set forth in such Section; and it is therefore specifically understood and agreed that *the provisions of this agreement shall not be construed as being applicable to erection, field fabrication or construction work*, or to employees engaged in such work, and the Company agrees it will not require any employee covered by this agreement to perform such work for the Company. It is understood and agreed that the foregoing provisions of this section shall not apply to Shopmen sent to the site of the construction to take measurements or to make templates. [Emphasis added]

---

[2]General Counsel's Exhibit 5, Section 1, p. 1.

In addition, Section 24, WAGE RATES and CLASSIFICATIONS, provided:

> (g) It is agreed that the wage rates and classifications set forth below are for the fabrication of miscellaneous ornamental iron works in one and two family houses. It is further agreed that if the Company fabricates the regular commercial miscellaneous ornamental iron works for commercial, city, state or federal buildings the employer will pay the wage rate set forth in the agreement between Shopmen's Local Union No. 455 and the Allied Building Metal Industries.

The last collective bargaining agreement between the parties also required employees in the appropriate unit to become members of the Union not later than the 31st day following the date of the agreement or the commencement of employment whichever was later,[3] and it required Respondent "to hire additional employees from an employment office operated by the Union."[4]

The Respondent contends that the appropriate unit for which it has recognized the Union as the representative of its employees since 1964 did not include its "outside" employees who installed the railings and other products that are fabricated in its shop. The Respondent bases this contention on the last sentence of the appropriate unit description in its contract with the Union, and on its noncompliance with the provisions of the contract in respect to the "outside" employees. As found below, I regard this contention as without merit.

The Respondent employs two types of employees, "inside" employees whom it calls mechanics, and "outside" employees whom it calls "installers."

---

[3] Id., Section 4(A), p. 4.

[4] Id., Section 4(C), p. 4-4a.

The inside employees cut, weld, fabricate, and paint iron railings, room dividers, cellar doors, window guards and similar iron products. The "outside" employees transport the products which are made in the shop by truck to the customer's premises and install them there. However, on rainy days when "outside" installation is not performed, and whenever the installers return to the shop before the end of the working day, they are assigned to do "inside" work of welding, painting, etcetera, the same as that done by the inside employees. As of June 30, the expiration date of the last collective bargaining agreement between the Respondent and the Union, the Company employed about 11 employees, four or five of whom worked "steady inside" the shop, and about six who did installation work "outside," and also did inside work as indicated above. Notwithstanding the provisions of the collective bargaining agreement, only three of Respondent's employees were hired by the Respondent through the Union hiring hall as required by the union contract. One of these three, John Cerullo, was an "outside" employee as well as the Union's shop steward.[5] All of the Respondent's remaining employees, both inside and outside, were hired by it without notice to, or the knowledge of, the Union.[6]

In view of the undisputed testimony (1) that when they are not working outside, the Respondent's installers also do the same work performed by inside employees, (2) that Cerullo, an outside man, is the Union's shop steward

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[5]The other two employees whom the Respondent hired through the Union were Nicola Sorrentino and John Mazzanti, both of whom worked "inside."

[6]President Bonanno admitted that he never informed the Union that he had hired employees through sources outside the Union hiring hall, but he nevertheless maintained that the Union knew what was "going on" by reason of its periodic audits of his books for the pension and welfare funds. I accord no probative value to Bonanno's testimony regarding the Union's knowledge of his employment of nonunion employees for its appears to be based on his speculation only. Moreover, Union Vice President Anthony Schifano whom I credit in this regard, testified that he did not learn that Respondent had some employees who had not been "covered by the union" until the latter part of June 1973.

and admittedly "was covered by the [union] contract," and (3) that the Respondent repeatedly violated the union contract in respect to the hiring and coverage of inside employees who are concededly in the contract unit,[7] the Respondent's like failure to comply with the union contract in respect to the hiring and coverage of "outside" employees can hardly be regarded as persuasive evidence that the contract did not apply to them.

In respect to the language of the contract on which the Respondent bases its contention that the "outside" employees are excluded from the unit which the Union represents, Union President William Colavito credibly testified that the international union with which the Union is affiliated consists of two types of locals – those which do erection work exclusively, and others, like the Union, which are made up of members who work in shops that do principally "fabrication of miscellaneous ornamental iron works in [for] one and two family houses,"[8] and also varying amounts of installation work of the products they fabricate. The latter shops are signed to "specialty" contracts, such as that executed by the Respondent, and generally utilize their employees for both inside fabrication and outside installation work.[9]

In the light of all the foregoing, including Colavito's credited testimony, the admitted applicability of the collective bargaining contract to outside employee Cerullo who also is the Union's shop steward, and the performance by Cerullo and the Respondent's other outside employees of inside, fabrication work, I conclude that at all times material herein, the Union has been the

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[7] As indicated above, only two of the Respondent's four or five inside employees were hired through the Union.

[8] See General Counsel's Exhibit 5, Section 24(G), page 24-c.

[9] The Union has another type of contract which it negotiates with an employer association for the work in the construction industry of fabricating "ornamental iron works for commercial, city, state or federal buildings." The latter contract provides a higher wage rate than that in its specialty contract.

collective bargaining representative of the Respondent's outside, as well as its inside, production and maintenance employees.

B. The Respondent's Alleged Bad Faith Bargaining

The Respondent is one of "a couple of hundred" employers "all" of whose contracts with the Union "expired on June 30, '73." The shops with which the Union has contracts employ from 1 to 200 employees. On April 13, the Union sent a notice to the Federal Mediation and Conciliation Service that its contract with the Respondent would expire on June 30.[10] On April 18, the Union by certified mail gave the Respondent "official" notice of its desire to terminate their existing contract "at the end of the current contract year," and to meet with it "for the purpose of negotiating a new collective bargaining agreement to become effective as of the expiration of the current agreement.[11] In connection with the forthcoming negotiations, the Union prepared proposed modifications for inclusion in the extension of the contracts that were about to expire.[12] Thereafter, the Union negotiated with a number of employers other than the Respondent, and obtained the signature of "a few companies" to a stipulation containing revised union proposals for

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[10]General Counsel's Exhibit 3.

[11]General Counsel's Exhibit 4. Joseph Bonanno, the Respondent's president, denied that he ever received the notice of termination of contract which the Union had sent him by certified mail. I do not credit his denial. Granting due allowance for Bonanno's quite apparent difficulty with the English language, I nevertheless consider his testimony to have been frequently deliberately evasive, on a few occasions self-contradictory, and in many instances quite unreliable.

[12]General Counsel's Exhibit 7. According to Vice-President Anthony Schifano, a copy of these proposals were "submitted" to the Respondent in May by Union Business Agent William Matienzo. Schifano admittedly was not present when these proposals assertedly were submitted to Bonanno, and thus, his testimony in this regard is obviously hearsay. Bonanno denied that he ever saw General Counsel's Exhibit 7 prior to the hearing in this case, and although as indicated earlier, I regard his testimony as unreliable in many instances, I believe and credit him in this respect.

a one year extension of the expiring contracts.[13]

On June 15, Union Vice-President Schifano visited the Respondent's shop for the prupose of negotiating an extension of the collective bargaining agreement which was about to expire. According to Schifano's credited testimony, he observed persons working there whom he didn't recognize, and he asked Bonanno whether they "were covered by the contract." The latter replied that "they were not his employees," and that they "were there working doing their own jobs."[14] Schifano and Bonanno then commenced to discuss the Union's proposals for a new contract. Boannno said that he needed a contract which would permit him to "survive" and be competitive, and that "in order for him to enter into a new agreement with us," he wanted the Union's permission to discharge three employees and "a written guarantee that we wouldn't try to get them reinstated." Bonanno also told Schifano that he wanted "a clause" in the contract which would permit him, regardless of how many employees he hired, to have only three employees that would be required to be members of the Union and be covered by the terms of the contract with the Union. Schifano replied that Bonanno's conditions were unacceptable and the meeting terminated.[15]

Following his June 15 meeting with Bonanno, Schifano investigated and was informed that the persons he had seen working in Respondent's shop

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[13] General Counsel's Exhibit 8.

[14] On that date, the Respondent admittedly had four or five "inside" employees working for it, only two of whom (Sorrentino and Mazzanti) had been hired through, and were known to be members of, the Union.

[15] The findings above are based on Schifano's testimony which I credit in these regards. Bonanno denied that Schifano came to his shop on June 15, and he testified that the first time he ever met Schifano was in the early part of July – after July 4th. As indicated earlier (see fn. 11, *supra*), I regard Bonanno's testimony as quite unreliable, and I do not credit him in these respects.

were employees, and not persons on their own jobs as Bonanno had represented. Thereafter on June 30, Schifano returned to Respondent's shop and told Bonanno that his employment of these persons "was a violation of the [union] contract." However, Bonanno again maintained that these men were not his employees, that they were doing "a little job [for themselves] here and there," and that they merely "rented" space from him. Schifano then gave Bonanno a copy of the Union's proposed stipulation for a one year extension of the expiring contract (General Counsel's Exhibit 8), and Bonanno examined it. Bonanno asked Schifano how much the proposed wage increase of "7%" would amount to in dollars and cents, and he also inquired about a proposed new clause which provided severance pay for employees. Bonanno said, "I don't have anything against the Union, I want to sign, but I have a problem and I want these three men out of the shop. I don't want them anymore." [16] Bonanno further said that because of his "concern about his financial burdens," and in order for him to "survive" in business, he wanted the Union to agree that he would not be required "to have anymore than three employees" in the Union and under the contract, and that he be allowed to hire as many over three as he needed, "and not put them into the union." Schifano rejected Bonanno's request to limit the number of employees to be covered by the contract. In respect to the discharge of employees,

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[16] Two of the three men (Sorrentino and Mazzanti) were fired by Bonnanno on June 22, but he did not notify the Union that they were terminated until July 9. See General Counsel's Exhibit 9. Mazzanti testified that Bonanno only sent him home but did not fire him on June 22, but I do not credit him, and I regard Bonanno's contrary testimony in this respect as more reliable. As Judged Learned Hand appropriately said in *N.L.R.B. v. Universal Camera Corp.*, 179 F.2d 749, 754 (C.A. 2), reversed and remanded on other grounds, 340 U.S. 474:

> It is no reason for refusing to accept everything that a witness says, because you do not believe all of it; nothing is more common in all kinds of judicial decisions than to believe some and not all.

Schifano told Bonanno "that if he had any problems with any employees (sic) he certainly had a right to fire them, but we [the Union] would follow the grievance procedure that was in the contract." Bonanno responded that he would not sign the Union's stipulation. [17]

On July 2, the Union struck and commenced picketing the shops of all of the employers who had not yet signed the Union's stipulation. The Respondent's shop was one of those which the Union struck and started to picket on July 2. One of the signs used in the picketing of the Respondent's shop bore the legend:

EMPLOYEES OF
ADAMS IRON WORKS
ON STRIKE
NO CONTRACT
Shopmen's Local Union No. 455
International Association of Bridge, Structural
and Ornamental Iron Workers
Affiliated with the A.F. of L. - C.I.O.

On the first day of the picketing, two of Respondent's employees who had begun to work before the picketing commenced, continued to work notwithstanding the picket line. The following day and for the next 2 weeks, only one employee crossed the picket line and worked for the Respondent. Since then, and continuing to the date of the hearing, none of the Respondent's employees have worked for it. As of the close of the hearing, the Union was "still striking and picketing."

On about July 6, and continuing thereafter during the balance of 1973, Bonanno undisputedly had many meetings at his shop with both Union Vice-

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[17] The findings in the foregoing paragraph are based on Schifano's credited testimony. As indicated earlier, Bonanno denied meeting with Schifano before early July, but I do not credit his denial.

President Schifano and other union officials during which the latter sought to obtain Bonanno's signature to its "stipulation" which extended the term of the last union contract until June 30, 1974. At these meetings Bonanno reiterated that he

> "wanted a guarantee from the union that we would not grieve the firing of three employees, and [that] we also would enter into a contract, a clause which would allow him to have only three guys, three employees in the contract which he wanted to hire himself, not through the union. And also the guarantee that he could add any additional employee that he wanted without respect of (sic) the contract, without us bargaining for it (sic)."

Schifano rejected these proposals and told Bonanno that his conditions were "unacceptable." On November 29, Bonanno told Schifano that "if we could guarantee him that we wouldn't grieve for Mazzanti,"[18] and agreed "to limit the amount of employees, he would sign a stipulation." Schifano rejected this revision of Bonanno's earlier conditions for signing a contract. [19]

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[18] By this date, Bonanno also had terminated the employment of Union Steward John Cerullo. As previously noted (See fn. 16, *supra*), Mazzanti had been fired on June 22.

[19] The findings above are based on Schifano's testimony which I credit in these respects, and which in part is corroborated by Union President William Colavito. The latter credibly testified that pursuant to a request from Bonanno during the strike "to see if I could help to settle the contract," he visited Respondent's shop in about August and was told by Bonanno that "he couldn't survive with more than three people in the Union." Bonanno admitted that he had many meetings with Schifano regarding the terms on which he would agree to renew the expired contract with the Union, but his version of these meetings differed substantially from that of Schifano. I credit Bonanno's testimony in respect to these meetings only to the extent that it accords with that of Schifano because I regard Bonanno's testimony in these respects as unreliable. For example, Bonanno was first asked by his counsel whether he attempted during these meetings to limit "how many men should be in the union," and he answered, "No, specific in number, we no mention it." A few minutes later, however, Bonanno contradicted his prior testimony and admitted that he had discussed with Schifano "the maximum number of men in the union," and that he had told Schifano, "I got to have four men that's all I can take. I can hire four men for

(continued)

C. Concluding Findings

The Union has been the recognized collective bargaining representative of the Respondent's production and maintenance employees for the past 10 years. As found above, the appropriate unit for which the Respondent has recognized and bargained with the Union included both the Company's "inside" employees who fabricated its products, and its "outside" employees who installed Respondent's products at customer's premises and also did inside work when not engaged in outside installation. [20] As the exclusive representative of the Respondent's employees in the said unit, the Union had a statutory obligation to fairly serve the interests of all the employees in the unit in a nondiscriminatory manner. [21] In view of the Union's representative status, the Respondent had obligation to deal and bargain only with the Union as the representative of all its unit employees, and it could not lawfully negotiate with individual employees regarding their terms and conditions of employment. [22] As found above, one of the conditions upon which

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[19] (continued)
the union, that includes the installation, [and] inside. I cannot use two or three more. He [Schifano] said no, everybody 100% got to be union and I told him the same thing, I can't survive . . . ." Bonanno admitted that he told Schifano that the three men whom he had fired "was (sic) out." I don't want them back," but he persisted in refusing to give a direct answer to the question of whether or not he had asked Schifano to "agree not to try to get them back." This evasion clearly was not based on Bonanno's lack of understanding of the question, for it persisted even after the question was put to him through an official interpreter in Italian, his native language. Finally, Bonanno reluctantly admitted, "I said [to Schifano] . . . whatever happened to the contract when we come in agreement absolutely I don't want these three men back."

[20] The Respondent has not raised any issue regarding the Union's majority status. Thus, the presumption of the Union's continued majority status which flows from the long history of bargaining and successive contracts between the Respondent and the Union remains unchallenged. *Dimarck Broadcasting Corporation,* 204 NLRB No. 47.

[21] *Ford Motor Company v. Huffman,* 345 U.S. 330, 337; *Steele v. Louisville & Nashville Railroad Co.,* 323 U.S. 192 at 198, 202-204.

[22] *Medo Photo Supply Corporation v. N.L.R.B.,* 321 U.S. 678, 683-684.

Bonanno insisted for his signature to the Union's proposed stipulation was that the coverage of the contract had to be limited to only three employees regardless of how many more than three that the Respondent hired and employed. Acquiescence to this condition would have required the Union to violate its statutory obligation to fairly represent all and not just some of the employees in the unit for which it was the exclusive representative.[23] Respondent's insistence on this condition also constituted an attempt, contrary to the proscriptions of the Act, to negotiate terms and conditions of employment individually with the employees over three in number in the unit for which the Union was the exclusive representative.[24] The conduct of negotiations on a basis other than the established bargaining unit is nonmandatory, and Bonnano's insistence on such a condition was further violative of the policies of the Act.[25] For all the foregoing reasons, I find and conclude that by conditioning the execution of a collective bargaining agreement upon the agreement of the Union to represent fewer than all the employees in the appropriate unit for which it was the exclusive representative, the Respondent failed and refused to bargain in good faith and has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

As found above, another condition which Bonanno imposed for executing a renewal collective bargaining agreement with the Union was that the latter

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[23] *Ford Motor Company v. Huffman, supra; Southwestern Pipe, Inc.*, 179 NLRB 364, 375-376.

[24] *Medo Photo Supply Corporation v. N.L.R.B., supra.*

[25] *N.L.R.B. v. Wooster Division of Borg-Warner Corporation*, 356 U.S. 342.

"guarantee" that it "would not grieve" over "the firing of three employees." Section 7 of the Act guarantees to employees the right to bargain collectively through representatives of their own choice and to engage in other concerted activities for mutual aid and protection. One of the rights thus guaranteed to the three dischargees was the right to be represented by the Union in the processing of grievances over their dismissal. This was not a right of employees which the Union had a right to waive in order to obtain a renewal of its expired contract.[26] Bonanno's insistence on this condition for renewing and extending its collective bargaining agreement with the Union thus was unlawful, and the Respondent thereby further failed and refused to bargain in good faith with the Union and violated Section 8(a)(5) and (1) of the Act.

D. The Nature of the Union's Strike

The complaint (paragraph 15(b)) alleges and the General Counsel contends that the strike of the Union against the Respondent which began on July 2 "was caused and provoked" by the unfair labor practices which I have found above. The Respondent contends that the strike that occurred was an economic strike. Contrary to the latter contention, I find merit in the complaint allegation.

As found above, ever since June 15 the Respondent has imposed two illegal conditions upon executing a renewal contract with the Union, and on July 2, the Union struck because it had "No contract" with Respondent. Under the circumstances, it can hardly be gainsaid that the unlawful conditions upon which Respondent insisted were not responsible, at least in part, for the failure to reach a contract, and ergo for the strike which ensued. I therefore find, contrary to the Respondent's contention, that the Union's strike against Respondent which commenced on July 2 was "caused and provoked" by the Company's unfair labor practices.

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[26] Cf. *N.L.R.B. v. Magnavox Company of Tennessee*, __ U.S. __ (Feb. 27, 1974), 85 LRRM 2475; *Newberry Equipment Company, Inc.*, 157 NLRB 1534.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the strike which employees of the Respondent engaged in since July 2, 1973, is an unfair labor practice strike, I will recommend that upon application, the Respondent be ordered to reinstate the strikers to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges previously enjoyed, dismissing, if necessary, any persons hired as their replacements, and to make the said strikers whole for any loss of earnings they may suffer by reason of the Respondent's refusal, if any, to reinstate them, by the payment to each of them a sum of money equal to that which he would have earned from 5 days after the date of his unconditional application for reinstatement to the date of the Respondent's offer of reinstatement, less his earnings during said period. Such backpay, if any, shall be computed with interest at 6 percent per annum in the manner prescribed by the Board in *F.W. Woolworth Company*, 90 NLRB 289 and *Isis Plumbing & Heating Co.*, 138 NLRB 716.[27]

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[27] This remedy is not intended to require the reinstatement by Respondent of employees who were fired before the strike began. As to them, no issue has been raised and I make no determination as to whether their discharge was lawful or otherwise.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

Conclusions of Law

1. Adams Iron Works, Inc., is an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees including plant clerical employees of the Respondent engaged in the fabrication and/or manufacture of all ferrous and nonferrous metals, iron, steel, and other metal products, including plastic products, also all maintenance employees of the Company engaged in maintaining machinery and equipment and other maintenance work in or about the Company's shop, and to work done by such production and maintenance employees. This agreement is not intended and shall not be construed to extend to office clerical employees, superintendents, or to employees who are represented by any other union affiliated with the AFL-CIO with whom the Company has signed a collective bargaining agreement.

4. At all times material herein, Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, has been the exclusive representative of the employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

5. By its insistence on and after June 15, 1973, on contract provisions which would preclude the above-named Union from fairly and equally and in a nondiscriminatory manner representing all of the Respondent's employees in the unit described above, and from processing grievances on behalf of all employees in the said unit, and which would permit the Respondent to bargain individually with employees in the said unit for which the Union is the exclusive collective bargaining representative in respect to rates of pay, hours of employment, and other terms and conditions of employment, the Respondent has failed and refused to bargain collectively in good faith with the Union, and has engaged in, and is engaging in unfair labor practices within the meaning of Section 8(d) and 8(a)(5) of the Act.

6. By the foregoing conduct, the Respondent also has interfered with, restrained and coerced employees in the exercise of rights guaranteed by Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The strike of the Respondent's employees in the aforesaid unit which commenced on July 2, 1973, was caused and prolonged by the Respondent's unfair labor practices found above.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, I hereby issue the following recommended:[28]

ORDER

Respondent, Adams Iron Works, Inc., its officers, agents, successors and assigns, shall:

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[28] In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

1. Cease and desist from:

(a) Refusing to bargain collectively in good faith concerning rates of pay, wages, hours of employment, and other terms and conditions of employment with Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, as the exclusive representative of the employees in the following appropriate unit:

> All production and maintenance employees including plant clerical employees of the Respondent engaged in the fabrication and/or manufacture of all ferrous and nonferrous metals, iron, steel, and other metal products, including plastic products, also all maintenance employees of the Company engaged in maintaining machinery and equipment and other maintenance work in or about the Company's shop and to work done by such production and maintenance employees. This agreement is not intended and shall not be construed to extend to office clerical employees, superintendents, or to employees who are represented by any other union affiliated with the AFL-CIO with whom the Company has signed a collective bargaining agreement.

(b) Insisting in collective bargaining negotiations with the Union on provisions in the contract which would preclude the Union from fairly and equally and in a nondiscriminatory manner representing all of the employees in the unit described above, from processing grievances on behalf of the employees in the said unit, or which would permit the Respondent to bargain individually with employees in the said unit in respect to rates of pay, wages, hours of employment, or other terms and conditions of employment.

(c) In any like or related manner interfering with, restraining or coercing employees in the exercise of their rights to self-organization, to form

labor organizations, to join or assist Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from engaging in such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8(a)(3) of the Act.

2. Take the following affirmative action to effectuate the policies of the Act:

(a) Upon request, bargain collectively and in good faith with Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, as the exclusive representative of all the employees in the appropriate unit described above, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon unconditional application, offer to all employees who went on strike on July 2, 1973, immediate and full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, dismissing, if necessary, any persons hired as their replacements.

(c) Make whole the said strikers for any loss of earnings they may suffer by reason of the refusal, if any, to promptly reinstate them, in the manner set forth in the section of this Decision entitled "The Remedy."

(d) Post at its place of business in Brooklyn, New York, copies of the attached notice marked "Appendix."[29] Copies of said notice, on forms

[29] In the event that the Board's Order is enforced by a Judgement of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE

(continued)

provided by the Regional Director for Region 29, after being duly signed by Respondent, shall be posted by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director for Region 29, in writing, within 20 days from the date of the receipt of this Decision, what steps have been taken to comply herewith.

Dated at Washington, D.C. March 26, 1974

/s/ Samuel Ross
Samuel Ross
Administrative Law Judge

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[29] (continued)
NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

FORM NLRB-4727
(9-69)

JD-179-74

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

AFTER A TRIAL AT WHICH ALL SIDES HAD THE OPPORTUNITY TO PRESENT THEIR EVIDENCE, AN ADMINISTRATIVE LAW JUDGE OF THE NATIONAL LABOR RELATIONS BOARD HAS FOUND THAT WE VIOLATED THE NATIONAL LABOR RELATIONS ACT, AND HAS ORDERED US TO POST THIS NOTICE AND WE INTEND TO CARRY OUT THE ORDER OF THE BOARD.

The Act gives all employees these rights:

To engage in self-organization;
To form, join or help unions;
To bargain collectively through a representative of their own choosing;
To act together for collective bargaining or other mutual aid or protection; and
To refrain from any and all these things.

WE WILL NOT do anything that interferes with these rights. More specifically,

WE WILL, upon request, bargain collectively in good faith with SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, as the exclusive representative of all employees in the bargaining unit described below, concerning rates of pay, wages, hours of employment and other terms and conditions of employment. The bargaining unit is:

All production and maintenance employees including plant clerical employees of the Company engaged in the fabrication and/or manufacture of all ferrous and non-ferrous metals, iron, steel, and other metal products, including plastic products, also all maintenance employees of the Company engaged in maintaining machinery and equipment and other maintenance work in or about the Company's shop, and to work done by such production and maintenance employees. This agreement is not intended and shall not be construed to extend to office clerical employees, superintendents, or to employees who are represented by any other union affiliated with the AFL-CIO with whom the Company has signed a collective bargaining agreement.

WE WILL NOT insist, in collective bargaining negotiations with the Union, on provisions which would preclude the Union from fairly and equally representing all employees in the unit described above, which would prevent the Union from processing grievances on behalf of all said employees, or which would permit us to bargain individually with employees in the unit described above for which the Union is the exclusive collective bargaining representative.

JD-179-74

WE WILL, upon unconditional application, offer to all our employees who went on strike on July 2, 1973, immediate reinstatement to their former jobs without prejudice to their seniority and other rights and privileges, dismissing, if necessary, any persons hired as their replacements.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8(a)(3) of the Act.

ADAMS IRON WORKS, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office,

16 Court Street - 4th Floor, Brooklyn, New York 11241 (Tel. No. (212) 596-3535)

GENERAL COUNSEL'S EXHIBIT 7

ORDER

On March 26, 1974, Administrative Law Judge Samuel Ross of the National Labor Relations Board issued his Decision in the above entitled proceeding and, on the same date, the proceeding was transferred to and continued before the Board in Washington, D. C. The Administrative Law Judge found that the Respondent has engaged in certain unfair labor practices, and recommended that it take specific action to remedy such unfair labor practices.

No statement of exceptions having been filed with the Board, and the time allowed for such filing having expired,

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, and Section 102.48 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Board hereby adopts the findings and conclusions of the Administrative Law Judge as contained in his Decision, and orders that the Respondent, Adams Iron Works, Inc., its officers, agents, successors, and assigns, shall take the action set forth in the recommended Order of the Administrative Law Judge.

Dated, Washington, D. C., April 29, 1974.

By direction of the Board:

George A. Leet

Gen'l C. Ex 7 ~~for~~ id in Ev.
by 12/18/74

Associate Executive Secretary

BEST COPY AVAILABLE

PAYROLL RECORD

19__ WEEK ENDING _____ PAYMENT DATE _____ SHEET NO. _____

EMPLOYEE'S NAME	HOURS WORKED S	M	T	W	T	F	S	TOTAL HOURS	RATE OF PAY	EARNINGS REGULAR WAGES	OVERTIME WAGES	OTHER WAGES	TOTAL WAGES	DEDUCTIONS FED O A B	FEDERAL WITHHOLDING TAX	STATE W. TAX	STATE DIS	CITY W. TAX	TOTAL DEDUCTIONS	NET PAY
Antonio Cirillo	7/5		9		5		4		W											
Antonio Cirillo																				
Cristina Scutamarchi	7/5		8	8	8		8	7	40											
Cristina Scutamarchi																				
Dom D. Pso	7/5						8	5	13											
Dom D. Pso																				
G. Tarbita	7/5		11/2 8	8	8	8	8		11/2 40											
Vito Chimisto	7/5		9		5		4		W											
Antonio Magnatta	7/5		1 8	8	8	8	11/2 12	8	11/2 44											
T. Giordoli	7/5						5	5	10											
Antonio Magnatta	7/12								40											
Antonio Cirillo	7/12								18 1/2											
Giuseppe Tarbita	7/12								46											
R Magnatta	7/19								36											
J. Cirillo	7/19								8											
Albert Guariglia	11/16																			
Albert Guariglia	11/21																			
Albert Guariglia	11/26																			

NO. 1208 GOLDSMITH BROS. N.Y. 10038 - (212) 267-7900

RESPONDENT'S EXHIBIT 1

July 9, 1973

Iron Workers Union Local 455
853 Broadway
New York, New York

To Whom it May Concern:

This letter is being composed in order to prove the validity of my action to dismiss Nicola Sorrentino from my employ.

On Friday, June 22, 1973, during working hours, Nicola Sorrentino spoke to a Mr. Gino Pira, a former employee, who is now one of our competitors for 3/4 of an hour.

Our Company had estimated a job on 36 Butler Street, Brooklyn, for $120.00. A few days after, I discovered from the customer that the job had already been done by the Pira Brothers. Also learned that she had not phoned them to do the job, but, that Mr. Pira himself went knocking at her door saying that he heard that she needed some work done. This may, perhaps have no connection to Mr. Sorrentino that day, but, I believe it is wise to state anything suspicious that has occurred.

Another employee, John Mazzanti always sided with Nicola Sorrentino and would cover up for him. When spoken to by me would reply in a very arrogant manner, not acceptable for an employer/employee relationship.

In conclusion, these are only some of the many things that take place in our shop. As to the above facts, we have witnesses. If you wish to have any further details, please contact us.

Very truly yours,

Joseph Bonanno, President

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

* * * * *

16 Court Street
Brooklyn, New York
Wednesday, December 18, 1974

* * * * *

3 PROCEEDINGS

JUDGE MULLIN: The trial will be in order.

This is a Formal Hearing before the National Labor Relations Board in the matter of Adams Iron Works, Incorporated and Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, Case No. 29-CA-3968.

The Administrative Law Judge presiding is Robert E. Mullin.

I would like now for each Counsel and other Representatives of the Parties state their appearances for the record if you would, please.

MR. BLYER: On behalf of the General Counsel, Alvin Blyer at 16 Court Street, Brooklyn, New York.

MR FERLAINO: On behalf of the Respondent, if your Honor please, John C. Ferlaino, 500 Old Country Road, Garden City, New York, Zip 11530.

I also move at this time that if any of the papers refer to Ferlaino & Fusco as Attorneys for the Respondent I make a motion at this time to amend it to read John C. Ferlaino.

It was intended that I represent the Respondent personally.

My partner has no interest in this matter whatsoever.

4 JUDGE MULLIN: Very well, your motion in that regard is granted.

MR. FERLAINO: You have no objection?

MR. BLYER: No objection.

MR. FERLAINO: Thank you, your Honor.

JUDGE MULLIN: Are there any others who wish to enter an appearance? I hear none.

* * * * *

MR. FLYER: Your Honor, at this time General Counsel would appreciate the opportunity to make an opening statement regarding this matter.

JUDGE MULLIN: Yes.

MR. BLYER: General Counsel intends to show by a preponderance of the credible evidence the following:

That the Charging Party Union has been the collective bargaining representative for the Respondent's production and maintenance employees for around at least 10 years and that the contract prior to the instance one expired on June 30, 1973 and that agreement on a new contract at that time was not reached.

Therefore a strike commenced on July 2 of 1973 which lasted up until May 29th of 1973.

Picketing occurred throughout that period of time.

As a result of the negotiations that took place prior to the expiration of the 1973 contract and shortly thereafter the Respondent – excuse me, the Charging Party in this case, Local 455, filed 8(a)(5) charges in the prior case involving the same Respondent.

Those charges led to the issuance of a complaint by this Region and a finding by the Board which adopted Administrative Law Judge Samuel Ross' decision pro forma on April –

MR. FERLAINO: I will object to that.

It has no bearing on this issue. I think it is prejudicial to the Respondent's position. I think it may create an impression in the Judge that this case has been prejudged and we are here on a prejudged case.

I take strenous objection to the comments you make.

This is a separate and distinct case, your Honor.

JUDGE MULLIN: That is true.

MR. FERLAINO: Those remarks should be avoided.

JUDGE MULLIN: But in the Board practice it is permissible to refer to an earlier case in which commerce facts and other facts may have been involved.

MR. FERLAINO: Exception, please.

JUDGE MULLIN: You have an automatic exception, of course, to any adverse ruling.

I point that out to you now so you will not prejudice your position if you do not urge specifically an exception.

MR. FERLAINO: Thank you.

MR. BLYER: The Board's decision was issued on April 29th of 1974 and found that Respondent violated Section 8(a)(5) of the Act by, among other things, conditioning bargaining on illegal provisions.

The Board also found in that case that the employees who engaged in the strike which commenced on July 2nd, of 1973 were unfair labor practice strikers and that upon their unconditional application for reinstatement they were entitled to offers of employment.

On June 13th, 1974 the Union, the Charging Party herein, made such an offer on behalf of four unfair practice strikers.

Although the letter which incorporated that offer stated there were seven
12 such strikers, it is General Counsel's position that there were only four of them that fit into the category of unfair labor practice strikers.

To date those employees, the four unfair labor practice strikers who made unconditional application for reinstatement through the Union have not been offered work by Respondent and have not been hired by Respondent.

General Counsel will also show that at about the time the Administrative

Law Judge's decision in the prior case was rendered, late March of '73, the Union met with one Jack D'Angelo who acted as Respondent's agent regarding negotiating new contract; that the Union met with D'Angelo and his attorney on two additional occasions and on one of those occasions, on May 8, 1974 the Respondent's president, Joseph Bonanno informed the Union that D'Angelo was authorized to work out a contract with the Union.

On May 29th D'Angelo, after negotiating with the Union on the 29th of May and on the 8th of May and in a prior meeting, on the 28th in the presence of his attorney and Mr. D'Angelo signed a new contract with the Union as the person authorized to sign the contract, and after being questioned and telling the Union that he was so authorized to sign.

It is the General Counsel's position that Mr. D'Angelo possessed the actual or apparent authority to negotiate and execute a contract on behalf of Respondent and that that contract should be binding on Respondent.

During those negotiations between the Union and Mr D'Angelo his attorney and a third individual, the first name of George, attended.

MR. FERLAINO: What meeting was this, sir?

MR. BLYER: During the negotiations of May 8th and of May 29th.

And at those meetings where negotiations took place, Mr. D'Angelo agreed that the Respondent would also re-employ one John Mazzanti, a former employee of Adams Iron Works, the individual who had the most seniority with the Company when it went on strike on July 2nd.

Mr. Mazzanti had been fired a few days before the strike commenced.

However, when Mr. Mazzanti reported to work as per the agreement with the Union he was refused employment by Mr. Bonanno and has not been permitted to work for the Respondent despite its agreement to re-employ him.

Now, since June 3rd, 1974 the Respondent has failed and refused to honor the contract it signed with the Union.

Moreover, in discussions between the Union and Mr. Bonanno subsequent to the signing of the contract Respondent through Mr. Bonanno asserted that
14 it would only abide by the contract if the Union agreed the contract would only pertain to half of its unit employees so that Respondent could establish the terms and conditions of employment for the other half of the unit employees.

It is the General Counsel's position that the Respondent has so refused to rehire the unfair practice strikers and so refused to hire employee Mazzanti and has refused to honor and implement the agreed upon contract and has conditioned honoring and abiding by the contract on the Union agreeing to represent for the purpose of collective bargaining only half of Respondent's employees, all because its employees engaged in the unfair labor practice strike and gave other assistance and support to the Union, and in order to undermine the Union's majority status among the Respondent's production and maintenance employees and in order to induce the Union to abandon its efforts on reaching an agreement with the Respondent, therefore that the Respondent has violated Section 8(a)(1)(3) and (5) of the Act.

That concludes my opening statement, your Honor.

Thank you very much.

MR. FERLAINO: I will be very brief.

We, of course, deny all the statements made by Counsel, specially or
15 generally.

The Union did not bargain in good faith. They were offered opportunity to bargain.

I met with them with Mr. Bonanno in their office and they were adamant in their attitude.

I thereafter notified them for a further meeting and I never heard another word from them.

Further than that the employees that he speaks about were fired for strong reasons and no grounds for submitting them back to us solely for the purpose of trying to protect the status of the Union in the eyes of these employees.

That is basically what they have in mind.

This is the under current of the whole thing here.

We refuse work when there is no work.

Furthermore, we don't believe that the contract is binding on us.

It wasn't signed by an officer of this corporation with apparent express or implied authority.

Under no circumstances was this contract effective against this because of a peculiar twist of events that caused the signing of this contract and some of the unusual events will be testified to on the witness stand.

I am not going to tell you our case.

I prefer to have the witnesses tell you the case.

I think that is what your Honor desires.

JUDGE MULLIN: Very well.

MR. FERLAINO: I respectfully move at the end of the Government's case to make the proper motions at that time.

JUDGE MULLIN: Very well.

MR. BLYER: Your Honor, General Counsel calls as its first witness Mr. William Colavito.

Whereupon,

WILLIAM COLAVITO

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn by Judge Mullin, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Blyer) Mr. Colavito, will you state your full name and

spell it for the Reporter, please. A. William Colavito, C-o-l-a-v-i-t-o.

Q. Mr. Colavito, what is your present position with Local 455? A. I'm the President of the Union.

Q. How long have you held that position? A. Since 1964.

* * * * *

18 Q. (By Mr. Blyer) Mr. Colavito, how long has Local 455 been the representative of the production and maintenance employees at Adams Iron Works?

19 A. At least as long as I have been in office.

Q. Which would be from when, sir? A. '64.

Q. Just very briefly, what does Adams Iron Works do? A. They fabricate iron into finished products like railings, guards, fire escapes, miscellaneous items, iron products of buildings.

Q. In addition to the fabricating what do they do? A. Well, they get steel from the mills or from distributors and they cut it and they fit it, they bend it and weld it into railings, guards.

That is what they do.

The men work on these things in the shop.

Q. Who does the installation work? A. They do installation also of railings and guards too.

Q. You represent all those employees doing that type of work? A. Yes, we do.

Q. When the contract that you had with an expiration date of June 30th, '73 expired was a new agreement reached? A. No, the men went on strike beginning in July.

Q. July of what year, sir? A. The first week, the beginning of July. It would be July 2nd.

20 Q. What year would that be? A. 1973.

Q. In addition to striking was there picketing? A. Yes.

Q. How long did this strike last? A. To May 29th, 1974.

Q. Was there picketing throughout that period of time? A. Yes, there was.

Q. Do you recall in late March of 1974 a meeting with Mr. Jack D'Angelo? A. Yes.

MR. FERLAINO: What date, sir?

MR. BLYER: In late March of 1974.

Q. Will you please tell us how that meeting came about? A. A person by the name of George was going in and out of the shop being observed by our members who were picketing for a period of time.

MR. FERLAINO: I will object to all of this, your Honor.

This is all hearsay. He doesn't know whether this took place or not.

This is testimony of someone else's statement to this man whom I can't cross-examine.

I'm going to object to all of this and move to strike it out and that it
21 be disregarded.

JUDGE MULLIN: Motion granted as far as this particular segment of testimony has been given so far concerning that at least hearsay but you may ask him as to the meeting they had.

MR. BLYER: Your Honor, I thought it would be proper to ask Mr. Colavito to describe the events that led up to the meeting just for the purpose –

JUDGE MULLIN: In so far as he is acquainted with them.

MR. BLYER: Just for the purpose of background and as an introductory matter, but not for the truth of the matters asserted therein, your Honor, so I think that would overcome the hearsay objection.

MR. FERLAINO: Oh, no, sir, it would not, and it is not binding on my client.

I think it is prejudicial to his interests.

He can say that this man said anything.

He can say that this man – I don't want to even characterize what he might have said.

JUDGE MULLIN: Objection sustained.

There was a meeting of some sort, I gather.

MR. FERLAINO: He can say that there was a meeting and I even object to this, if your Honor please, on the grounds that we don't know whether there was a meeting.

We weren't present, we are not bound by anything that doesn't take place in our physical presence and I mean if I'm sitting talking there and I'm next door, I am not present.

I move to strike out all of that testimony.

JUDGE MULLIN: Motion granted.

Q. (By Mr. Blyer) Mr. Colavito, did there come a time in approximately late March of 1974 that you had a meeting with Jack D'Angelo? A. Yes.

MR. FERLAINO: I will object to that on the grounds that unless there is a basis made that Jack D'Angelo was an officer of this corporation it is not binding on the Respondent.

JUDGE MULLIN: In order to cut through some of this does D'Angelo have any position with the Company?

MR. FERLAINO: None whatsoever.

JUDGE MULLIN: A supervisor?

MR. FERLAINO: None whatsoever.

JUDGE MULLIN: During the period in question?

MR. FERLAINO: Nothing, not an employee, not an officer, not a director, not a stockholder, absolutely nothing, your Honor.

MR. BLYER: Your Honor, it is General Counsel's position -

MR. FERLAINO: One moment, please.

I don't care what your position is, you ask questions only and let the witness answer subject to my objection and the Court's rulings.

MR. BLYER: Your Honor, I think I am entitled to state to you that it is the General Counsel's position –

MR. FERLAINO: I will object to any statement that he makes.

If he wants to testify he can take the witness stand.

JUDGE MULLIN: I want to hear his position, Counsel.

MR. BLYER: That Mr. D'Angelo as alleged in the formal papers of the Complaint is an agent of the Respondent in this case for the purposes which are encompassed by the allegations of the complaint and certainly that is one of the material issues in this case, whether or not Mr. D'Angelo's conduct is binding on Respondent.

We take the position that it is and we are attempting to elicit evidence showing Mr. D'Angelo's participation in this case.

MR. FERLAINO: I will object.

I am going to object to all this, your Honor. I think this is very prejudicial.

I don't think he has a right to say this in any Court of Law.

This is after the testimony when he can make this summation.

JUDGE MULLIN: Counsel, under these circumstances I will do this:

Obviously this is an issue and in order to make a finding the Court will have to know what the facts are.

I will permit him to testify, to question this witness as to conversations with D'Angelo.

At the same time, however –

MR. FERLAINO: In the absence of the Respondent, if your Honor please?

JUDGE MULLIN: The Respondent is right here.

MR. FERLAINO: No, no, I mean at the time and place that he is talking about.

JUDGE MULLIN: There is an issue as to whether obviously D'Angelo had any authority and whether he did or did not have any authority is one of the issues obviously presented in this complaint.

MR. FERLAINO: Right.

JUDGE MULLIN: So that I will hear the testimony of the General Counsel whose position is that D'Angelo did have authority as an agent.

I will then hear the testimony of the Respondent to establish that D'Angelo had no authority.

MR. FERLAINO: That is precisely my point. Very well.

Let the testimony determine.

JUDGE MULLIN: Certainly the arguments of Counsel are of course not testimony and so you go ahead.

You may question him as to conversations that this individual had with D'Angelo and then later on, when your turn comes up you, of course will put on your case through your witnesses.

Q. (By Mr. Blyer) Mr. Colavito, do you recall a meeting in late March of 1974 with a Mr. Jack D'Angelo? A. Yes, I do.

Q. Will you tell us where that meeting took place?

JUDGE MULLIN: You have a standing objection.

MR. FERLAINO: I would like a voir dire at this time.

JUDGE MULLIN: Well, let his go on just a little further.

MR. FERLAINO: Because it destroys the impact of the voir dire, may I have a voir dire at this time?

MR. BLYER: Your honor, I don't see anything to be voir dired.

If I may, normally voir dire, as I understand it, relates to authenticity

of documents.

I don't believe we have documents before us.

26 JUDGE MULLIN: Yes, the Board practice this is generally the case.

MR. FERLAINO: If your Honor please, any testimony that this man or any witness – I respectfully ask the witness before this Court to step out, please.

Any witness in this case on the part of the National Labor Relations Board to please step out of the room.

MR. BLYER: Do I understand you are making a motion to sequester witnesses?

MR. FERLAINO: Yes.

JUDGE MULLIN: A motion to sequester witnesses?

MR. FERLAINO: Let me just do this once before I make that other motion.

I want to make this one motion.

I make a motion at this time on the record that I have a voir dire with respect to this witness and with respect to the question asked.

I ask your Honor to rule thereon.

JUDGE MULLIN: Yes.

I will rule that you will wait until cross-examination.

MR. FERLAINO: I strenuously object.

JUDGE MULLIN: Yes.

MR. FERLAINO: I think this case is seriously impaired.

27 JUDGE MULLIN: I will let you examine on cross.

MR. FERLAINO: Exception.

JUDGE MULLIN: Very well. You have a standing objection.

* * * * *

Q. (By Mr. Blyer) Will you tell me where this meeting took place,

Mr. Colavito? A. It took place in Brooklyn.

Q. Can you state approximately where in Brooklyn? A. Around 86th Street in Brooklyn.

Q. Who was present at this meeting? A. There was a George, a Jack D'Angelo and another fellow whose name was John or Jim.

Q. Will you tell us what was said at this meeting and identify the persons who made the statement?

MR. FERLAINO: I have an exception to all of this.

JUDGE MULLIN: Yes, the entire line.

28 A. Jack D'Angelo introduced himself, says he was a friend of Joe Bonanno, and he had a piece of business, is a businessman.

Joe wasn't there because Joe is not a calm guy and doesn't help in discussions.

MR. FERLAINO: I object to all that, Judge.

MR. BLYER: Your Honor –

MR. FERLAINO: Characterization.

JUDGE MULLIN: This is permitted only if you are relating conversation you had with this individual whose status is in question.

MR. BLYER: If I may, your Honor.

MR. FERLAINO: He is asking if you are relating what Mr. D'Angelo said or telling your opinion of Mr. Bonanno.

THE WITNESS: No, it is conversation that book place.

Q. (By Mr. Blyer) With the Court's permission why don't you start again and tell us what Mr. D'Angelo said to you? A. We met in a combination coffee shop and bar, in the backroom.

Jack D'Angelo introduced himself and the other fellow by the name of John.

George had picked me up at the station.

29 Jack said that he was a friend of Joe Bonanno's, and that he had a piece of the business, he was a businessman, he wanted to see if we could settle the strike.

Joe was not there because Joe – he knew that Joe was not a calm guy and in order to try to work our way through resolving this.

Q. What else was said at this meeting? A. First we got into some of the issues and he said "Why must you insist on having all the guys in the Union? The Judge said it wasn't necessary. It could be sustained as such."

I said my understanding of the Judge's ruling was otherwise, and we argued over this point for a while.

He discussed the fact that the company was a small company, there was a lot of competition in it, so we discussed the economy of the industry, the iron shops and his particular phase of it.

We discussed questions of the fellows who are on strike, reinstatement of fellows on strike.

I told him I would be willing to make some concessions because of the fact the strike was on for so long and it was a small shop, that it would be custom fit to the situation, such as change in some classification clause we had and maybe the overtime clause.

Perhaps the question of the strikers, some of them may be working and
30 that may be, you know, an academic issue.

Q. What do you mean it may be an academic issue? A. Well, the fellows may not want to go back, you know.

A fellow gets in a job, after a period of time they are not interested in going back, especially if there has been any development of personal feeling between the employer and employees.

Q. Did you spell out at all to Mr. D'Angelo and the other parties what you meant when you talked about concessions regarding overtime and classifi-

cations? A. Yes, I said our contract which expired as well as the new contract that was negotiated, the standard contract which he had, provided for double time for Friday, any time on Friday would be double time and all Saturday would be double time.

I said we will make a concession to make that time and a half, especially since he was complaining that he never put the men to work on overtime on Saturday because it was too high and the men would go to work elsewhere, and that would create a turnover of employees and also help his competition rather than help himself.

So I felt that we could adjust ourselves to a situation that he had and that was to lower the overtime rate for him, his shop, and to give him a basis
31 for maintaining his work force on a stable basis.

Q. How about with regard to the classifications system?

What did you say, if anything, about that?

A. Well, his contract provided for apprentices and a ratio of one apparentice to six men and I believe it also provided for laborers who were not permitted to handle tools but could just handle material or use tools rather.

I said we will eliminate the apprenticeship clause.

We will allow the laborers to use tools or the helpers, and we would change the ratio.

Instead of one to six mechanics we would change it to 50 per cent of the work force.

MR. FERLAINO: To what, sir?

THE WITNESS: 50 per cent of the work force.

Q. (By Mr. Blyer) What did you mean when you said you were going to change it to 50 per cent of the work force? A. Well, they were restricting the ratio for one apprentice for every six mechanics and the work force would encompass laborers as well as layout men or finishers, so it was

restricted to one for every six mechanics.

I was going to eliminate that clause and provide for a ratio of laborers or helpers, to 50 per cent of his work force.

32 Q. So in other words, am I correct in saying for every 10 – A. – workers there –

Q. He could have five laborers? A. Right.

Q. Up to five laborers? A. Right, and they would be permitted to use tools.

Q. In your standard contracts were laborers permitted to use tools?

A. They are not.

Q. Is there a clause in your standard contract regarding the ratio that the Employer must hire with regard to laborers and other workers, the term mechanic? A. There is a ratio for apprentices and mechanics.

Q. But not for laborers to mechanics? A. No, not for laborers to work force but they are restricted to the handling of material and painting material.

Q. The standard contracts prohibits laborers from handling tools?

A. Right, using tools, yes.

In the course of discussion they said look it is a small shop, why don't you just forget about it, you know, what does it mean to you?

We insisted that we represented the workers there as well as representing

33 the industry and we intended to work on an agreement with the Company and an agreement with the Company could handle since they were a productive Company.

* * * * *

34 Q. Mr. Colavito, you referred to a decision. What did you mean by that? A. There was an Administrative Judge's position on the previous case held in '73 involving the question of refusal to bargain, and the Company --

Q. You have answered my question.

That is the decision you were referring to? A. Right.

Q. Mr. Colavito, how did the meeting conclude? A. They would keep in touch with us and set up another meeting.

Q. Who is they? A. D'Angelo would.

35 He said he would call the Union to arrange for another meeting.

Q. Approximately how long did this meeting last, sir? A. An hour and a half.

Q. About the same period of time, in late March of 1973 did the Union contact a Mr. Richard Gaba who normally represented Adams Iron Works?

A. Yes, when the Administrative Judge's ruling came down our office contacted Mr. Gaba.

They wanted to sit down with them and discuss and negotiate a contract.

* * * * *

Q. (By Mr. Blyer) Mr. Colavito, as a result of the Union's conversation with Mr. Gaba was there a meeting?

What occurred?

MR. FERLAINO: I'm going to object to any question which is couched

36 in the words as a result of.

This is not proper examination.

Q. After speaking with Mr. Gaba, Mr. Colavito, what happened next?

A. Telephone calls and communications.

A meeting was arranged for May 8th.

Q. Was that meeting held on May 8th? A. Yes, it was.

Q. Where was it held? A. It was held in the Holiday Inn at LaGuardia Airport.

Q. Did you attend that meeting, sir? A. Yes, I did.

Q. Prior to attending that meeting did you get a call from a Mr. Jack D'Angelo? A. Jack D'Angelo called the office and said he would be present at that meeting too.

Q. When you arrived at the meeting on May 8th, 1974 will you tell us, first of all, who was there? A. In the lobby near the entrance there was Jack D'Angelo, Joe Bonanno, George, another person, a Mr. Schonfeld, an Attorney who was introduced to me as an Attorney and Mr. Schifano who is a vice president of our Union.

Q. Who introduced Mr. Schonfeld to you? A. Jack D'Angelo.

Q. How did he introduce him? A. He says "This is Joel Schonfeld.
37 He is our Attorney."

Q. What happened after the introduction, sir? A. We went into the coffee shop.

Gaba wasn't there and Joe Bonanno said he would wait for Gaba.

Q. Where did he wait, sir? A. In the lobby by the entrance, I guess.

Q. Who went into the coffee shop? A. D'Angelo, George, myself, Schifano and Schonfeld.

Q. What happened? A. After we started talking about the contract, various questions about the strikers coming back.

They were wondering if I was going to insist on the strikers going back.

We discussed the proposed concessions that I had with them out in the Brooklyn meeting which were dealing with the classification question and the overtime question, and we discussed these for a period of time.

It was agreed that I should write them up and incorporate them into the formal agreement which we had in the industry.

Q. Who asked you to do that, sir? A. Jack D'Angelo.

Jack D'Angelo did most of the talking.

38 Schonfeld –

MR. FERLAINO: I will object to that, Judge.

"He did most of the talking."

We want conversation.

JUDGE MULLIN: Yes. State what he said insofar as you can recall.

MR. FERLAINO: If he can't recall it let him so state.

JUDGE MULLIN: I will instruct the witness.

Q. (By Mr. Blyer) What did Mr. D'Angelo say regarding the writing up of the proposals of the contract?

MR. FERLAINO: I will object to that, Counsel.

He is leading this witness and this is – I am going to move that you censure him to stop this.

MR. BLYER: Your Honor, he has already testified to that so I don't think it is leading.

JUDGE MULLIN: Move on.

A. On the issue of the strikers he said "Suppose we give you some men, we put some men on.

"Would the Union permit them to be hired?"

I said "No, the strikers have to go back first.

"If you have some men you want you refer them to the Union hiring hall and we will place them through the Union hiring hall," but the strikers had to go back first.

Q. Who said that to you? A. Jack D'Angelo and that was my reac-

39 tion to his suggestion about the strikers.

On the question of the classification system again I spelled it out for him because I was more familiar how much this would help him because of the fact that he would have laborers now using tools, a larger ratio and therefore would cut down his unit costs.

I spelled that out for him saying that the laborers, now he can hire as many laborers as he wants, up to 50 per cent of the work force where previously he was limited to one apprentice and he understood that that was a concession.

On the overtime, instead of being double time for Saturday he understood that to be a concession.

He then said to me "Okay, write them up and incorporate them in the contract" which we had previously given to the Company and which they had the one that expired June 30th of '73 and they would take it up with Joe, he would take it up with Joe and they would look them over and get back to us with another meeting.

Q. Did he tell you what to do with the contract after you incorporated your proposals?

MR. FERLAINO: I will object to the leading nature of the question.

JUDGE MULLIN: Objection overruled.

40 Q. (By Mr. Blyer) Go ahead, Mr. Colavito. A. He said I should give a couple of copies to Mr. Schonfeld and they would meet and go over it and take it up with Joe and look it over and let us know for another meeting.

Q. Did Mr. Schonfeld engage in these negotiations? That is the question.

A. D'Angelo did all of the negotiating.

Schonfeld raised a few questions, what were the increases.

I told him what the increases were.

He said about a seniority question which dealt with how people were laid off.

Two or three questions and that is about it but he otherwise stayed – he and George didn't do any talking.

Q. During the course of your discussions that you just related to us,

did Mr. Gaba speak to you? A. Well, I guess the middle of the time we were there Mr. Gaba came into the room and he asked me where was Joe and I said Joe was out in the lobby and he went out in the lobby, that is all.

Q. At any time during the discussions did Mr. Bonanno participate? A. No, he was not in the meeting.

Q After you finished your discussions in the coffee shop what happened
41 next? A. We went out to the lobby and Joe was out in the lobby.

Q. When you say we, who went out? A. Everybody who was present.

There was D'Angelo, Schifano, George and Schonfeld and myself went out in the lobby.

Joe was there by himself and he says "Gaba wants to talk to you, he is inside."

I went inside with Schifano and we sat down at the table and Joe Bonanno came in with us and we sat down at the table with Gaba.

Q. As best you can tell us what was said and who said what to him? A. Joe Bonanno started talking and he started to cry that he can't have a shop with all the workers in the Union covered by the contract.

He went on for a while and after a while Gaba said to him well, you know, "We can't do anything about that any more."

Gaba before the discussions started talking to us about his negotiations that he was conducting up in the Bronx with some organization.

Then Joe spoke in terms of he couldn't have the Union covering all the employees.

42 Gaba, after a while, stopped him in terms that he couldn't do anything about that and then he said "Well, let's go over the contract section by section."

At that point I said it is getting to be a little confused.

I just finished negotiating with one guy, I'm not going to be negotiating with two parties, what is the situation?

Gaba said "Well, I have been handling it up to now.

"If Joe wants somebody else it is up to Joe. I have no objection if Joe wants somebody else."

At that point he says "Okay, work it out with Jack," saying to me "Okay, you work it out with Jack."

Q. What happened at that point? A. I shook hands with Gaba and Joe and myself and Schifano went outside and then Schonfeld and D'Angelo were out in the lobby, George was not there.

And again Joe says "Look, work it out with Jack" and Jack said "Get those contracts to Schonfeld and as soon as you have a chance to look it over we will have another meeting."

Q. Do you recall anything being said out in the lobby?

MR. FERLAINO: I'm going to object to that.

I'm going to object to the Judge.

43 JUDGE MULLIN: Objection sustained.

Q. (By Mr. Blyer) Do you remember anything else that was said out in the lobby? A. Joel gave me his card, Schonfeld gave me his card.

I told Jack what had gone on in that brief meeting we had with Gaba saying that, you know, Gaba started to get into the contract and I raised the point I was getting confused and that Gaba had said that, you know, it was up to Joe really if he didn't want him involved in negotiations, and that Joe says okay, work with Jack.

MR. FERLAINO: This is repetitious now.

JUDGE MULLIN: You may testify, however, insofar as the conversation that occurred out in the lobby, only on that.

THE WITNESS: That is all I'm doing.

I was acquainting Jack with briefly what took place at that brief meeting and that was the gist of it.

MR. BLYER: Your Honor, I would like his answer read back to see if the Reporter caught the last part of it.

(Whereupon, the last answer was read by the Reporter.)

Q. (By Mr. Blyer) After your conversations in the lobby what happened next? A. I went back to the office and I prepared the changes that I
44 made, the written changes into the contract and we had them delivered to Mr. Schonfeld.

MR. BLYER: Your Honor, I would like to have marked for identification these documents as General Counsel's Exhibit No. 2.

(The document above-referred to was marked General Counsel's Exhibit No. 2 for identification.)

* * * * *

Q. (By Mr. Blyer) Mr. Colavito, I show you what has been marked for identification as General Counsel's Exhibit No. 2.

Can you identify that document?

* * * * *

45 Q. (By Mr. Blyer) Can you identify that document? A. This is the contract that was submitted and sent to – delivered to Schonfeld and that was eventually signed by Jack D'Angelo.

MR. FERLAINO: I will object to the statement made by the witness that it was eventually signed by Jack D'Angelo.

He wasn't present when it was signed and at least I don't believe he was present.

Under those circumstances I move to strike out the testimony that the witness has given unless it is going to be established he saw his signature.

MR. BLYER: I will get to that, your Honor.

JUDGE MULLIN: Objection overruled for the time being.

Q. (By Mr. Blyer) Mr. Colavito, can you please tell us what changes you made in the contract before submitting it to Mr. Schonfeld?

MR. FERLAINO: I will object to that, your Honor.

That is not binding on this Respondent, no proper foundation.

46 JUDGE MULLIN: Objection overruled.

MR. FERLAINO: Exception

A. We changed Section 7 which deals with overtime.

As I explained before we changed the previous contract.

The standard contract provides for Friday, any overtime on Friday is double time and any work on Saturday is double time.

That was changed so that Monday through Friday, any overtime is time and a half as well as Saturday work would be time and a half.

Q. What else did you change, sir? A. We changed Section 24 which is the wage and classification section and we changed effective dates of increases.

We eliminated the apprenticeship section of Section 24 and we modified laborers or helpers' classification in Section 24 so that the ratio would be 50 per cent of the work force, and that they could work with tools.

We also changed the effective dates of the contributions to the various funds.

Q. Talking about the period prior to submitting the contract to Mr. Schonfeld?

A. Yes, yes.

47 Q. Is it your testimony at that point, prior to submitting it to Schonfeld you had changed the effective date of the wage increases in the funds?

MR. FERLAINO: Objection.

JUDGE MULLIN: Objection overruled.

MR. FERLAINO: I will object to Counsel's testifying.

JUDGE MULLIN: Objection overruled to the last question.

A. I don't recall now if I did it at the final meeting with Mr. D'Angelo or I did it at the time I sent it to Schonfeld.

Q. After submitting the contract to Mr. Schonfeld did you have any conversation with Mr. Schonfeld? A. Yes, I ran into him in the lobby of the building and I asked him what happened with the contract, had he had time now to look at it and he said, well, they looked it over, looked okay but he was busy, he was down to Baltimore, back and forth.

MR. FERLAINO: I object to all this testimony unless it can be established that Mr. Schonfeld was the Attorney for this Respondent.

Nothing that this man says, if your Honor please, would be binding on this Respondent.

JUDGE MULLIN: That may be an issue also, but Mr. Schonfeld at one point was Attorney of record for the Respondent; is that correct?

48 MR. FERLAINO: Absolutely not, sir.

MR. BLYER: No, your Honor.

He was never an Attorney of record for the Respondent.

He was just –

MR. FERLAINO: Please, Judge, this man has no right to say what –

JUDGE MULLIN: The name Schonfeld has appeared in the testimony of this witness as to a meeting.

MR. FERLAINO: As being present, period.

JUDGE MULLIN: And whether Schonfeld had any authority at any time is obviously also an issue, so it is received only with that understanding.

MR. FERLAINO: Absolutely.

Q. (By Mr. Blyer) You can tell us what Mr. Schonfeld said, your conversation with Mr. Schonfeld as you were relating. A. I met him in the

lobby.

He had the contract I think a week and a half or so, maybe two weeks at the time and I asked him what was happening.

He said everything looked all right, the problem was getting together with the parties because he was extremely busy, he was down back and forth to Baltimore but he says they will work out a date and get back to me.

Q. Thereafter was a date set? A. Yes, there was.

We made it on May 29th.

Q. What took place on May 29th? A. I met Jack D'Angelo, Schonfeld, myself and Schifano.

We met at the Holiday Inn again at LaGuardia.

Q. Will you tell us what was said at that meeting and make sure you identify who said what? A. Well, Jack –

MR. FERLAINO: Again, my objection, if your Honor please.

My client wasn't even present any more.

In the other days he wasn't present during basically all the conversation, but here he is not present at all.

I say any testimony now is not binding of this Respondent.

JUDGE MULLIN: Again there is a continuing issue as to whether D'Angelo had any authority and with that understanding the testimony as to such meeting on May 29th will be received.

Q. Will you start from the beginning and tell us what was said and be certain to tell us who said what? A. Well, again D'Angelo did all the talking in the main on the contract.

50 He did all the talking for the Company and I did all the talking for the Union.

Jack said "Look, is there anything else you can do for the Company?"

He raised – one of the questions he raised was – raised two questions.

One, the question of the length of the contract.

"Can't we make it longer?"

And Two, he said "Look, we can't have – we are not going to hire a working foreman.

"Can't Joe be the working foreman?"

And we eventually agreed that –

Q. What did you say to Mr. D'Angelo when he raised these points?

A. I conceded, I made some concessions.

My reaction was we would agree that Joe could act as a working foreman.

However, any replacement of the original owner would have to be covered by a Union job, so we agreed to what he wanted to do.

He wouldn't have to hire a Union foreman but he could have Joe act as a foreman.

Even though I raised some questions about Joe and his business he was in and out most of the time and the foreman usually has to be in the place,

51 but eventually I conceded to that.

On the extending of the term of the contract I agreed that we would extend the contract for three years if they agreed to pick up whatever fringes and wage increases were negotiated in the standard industry agreement because that was going to expire June 30th, '75 and then he could be permitted to work during the period of that negotiation, just free to pick up whatever fringes were negotiated and whatever wage increases were negotiated and that was worked out that way.

Q. Originally what was the Union's proposal regarding the length of the contract? A. It would expire June 30th, '75.

Q. After speaking with Mr. D'Angelo at this May 29th meeting what was the agreed upon expiration date of the contract? A. It would run

June 30th, '77.

Q. Do you recall any other issue being discussed across the table on May 29th? A. Yes.

I said that he would have to call – recall the strikers and if he wasn't going to hire more back at the present moment because there wasn't work he would have to recall John Mazzanti and they agreed to take him back.

52 That was part of the agreement.

Q. Who agreed? A. D'Angelo.

Q. What was said, if anything, about Mazzanti? A. Well, in the end I said we would take the picket line away and I would have John Mazzanti report to work tomorrow.

Jack says "Wait a couple of days before you send him down," but it is okay to take him back but because of it, he was a steady picket there, he was in front of the shop every day during the strike and almost a year, he felt it might be better to wait a day or two before he sent him down.

Q. With regard to the issues that you told us were discussed on May 29th of '74 which, if any, were incorporated into the contract? A. I wrote up a sentence dealing with the question of the original owner being the working foreman.

However, his replacement would have to be covered by a Union man.

Q. How did you start that testimony, you what – A. I wrote into the contract the concession I made in terms of Joe Bonanno.

I put down –

MR. FERLAINO: When did he write?

53 May I inquire when he made this concession, when he wrote this?

JUDGE MULLIN: This was at the meeting?

THE WITNESS: Right at the table, right then the 29th I wrote that to the contract.

We each had copies of the contract and I wrote that into the contract saying where it dealt with the working foreman becoming a member of the Union, Section 24, saying that – I don't remember the exact words, but it was dealing that the original owner could act as a working foreman but however, any replacement of the original owner would have to be covered by the contract.

Q. What else, if anything, did you write in specifically into the contract? A. I wrote the extension of the contract dealing with the expiration date of '77, where the Company would agree to abide by whatever wages and fringe benefits were negotiated when the contract expired in June 30th, '75.

I wrote that part into the contract too.

Q. With regard to the agreement you testified to concerning the re-employment of Mr. Mazzanti, was that specifically written into the contract? A. No, it was not.

Q. At this meeting what else do you recall, if anything, being discussed?

54 A. Well, during the meeting I asked where Joe was, if Joe was coming.

Q. Who did you ask? A. I asked D'Angelo.

I was speaking, you know, we were carrying on the conversation, negotiating.

He said "No, Joe won't be here."

I says who is going to sign?

He said "I'm going to sign, I'm a partner."

He said and he spoke to the Attorney, Schonfeld and said "I can sign, can't I?"

And he said, "Yes, you can sign."

Q. Who said, "Yes, you can sign"? A. Schonfeld said to Jack.

Q. What happened then? A. Jack signed the contract.

He signed both and I signed both.

Q. What happened with the contract? A. He took one and I took one.

MR. FERLAINO: I have a standing objection to all of this.

JUDGE MULLIN: Oh yes.

MR. BLYER: Your Honor, at this time I would like to offer into evidence General Counsel's Exhibit No. 2 what has been identified as a contract between Adams Iron Works and Local 455.

55 MR. FERLAINO: I object to the introduction.

No proper foundation, no proof of agency, no proof of authority implied or expressed or written.

JUDGE MULLIN: I will reserve a ruling on this offer.

Q. (By Mr. Blyer) On May 29th did you have a conversation with Mr. Schifano? A. Yes.

Q. What did you say to Mr. Schifano?

MR. FERLAINO: I will object to that.

It is not binding on this Respondent, conversation between Union members.

JUDGE MULLIN: What is the position as to Schifano's status?

MR. BLYER: He's a vice president, your Honor.

I don't think that is contested, a vice president of this Union.

MR. FERLAINO: Don't make any concessions on my part, Counsel.

I don't know whether he is a vice president or not.

JUDGE MULLIN: He is an officer of this Union?

MR. BLYER: Yes, your Honor.

JUDGE MULLIN: As a result of the conversation with Schifano ask him if he did anything.

56 MR. FERLAINO: I will object to that, your Honor, on the grounds that anything that he would have done as a result of the conversation are

not binding on this Respondent.

JUDGE MULLIN: That is true.

MR. BLYER: Your Honor, is Mr. Colavito permitted to answer the question regarding his conversation with Mr. Schifano?

JUDGE MULLIN: Objection sustained, internal Union discussion.

MR. BLYER: That relates to this case, your Honor.

MR. FERLAINO: I will object to any comments that you make. The ruling has been made.

JUDGE MULLIN: Direct your objections to the Court.

MR. FERLAINO: Yes, Judge.

Q. (By Mr. Blyer) Mr. Colavito, did you have a conversation with Mr. Schifano on June 3rd of 1974?

MR. FERLAINO: Objection.

JUDGE MULLIN: Objection sustained.

MR. BLYER: Your Honor, I think he's entitled to at least answer yes or no.

I don't intend to go into your other ruling. I don't intend to go into the substance of the conversation, but before asking him the next question I need to have an answer, yes or no and I think it is appropriate.

57 JUDGE MULLIN: Did you have a conversation with Schifano on June 3rd?

THE WITNESS: Yes, I did.

Q. (BY MR. BLYER) As a result of that conversation what did you do?

MR. FERLAINO: Objection.

JUDGE MULLIN: Objection overruled.

MR. FERLAINO: Exception.

A. As a result of that conversation, the conversation related to me.

Q. Don't tell us the substance of the conversation, just – A. As a result –

Q. After speaking to Mr. Schifano on June 3rd what did you do?

A. I contacted our attorney and related to our attorney what had transpired.

MR. BLYER: Your Honor, I would like to have marked for identification this one-page document in duplicate as General Counsel's Exhibit No. 3.

(The document above-referred to was marked General Counsel's Exhibit No. 3 for identification.)

MR. FERLAINO: I have no objection to the marking of this for

58 identification.

MR. BLYER: This is your copy.

Q. (By Mr. Blyer) I show you what has been marked for identification as General Counsel's Exhibit No. 3.

Can you identify that, please, Mr. Colavito? A. Yes, it is a communication we received at the local office from Mr. Ferlaino.

MR. BLYER: Your Honor, I offer that into evidence as General Counsel's Exhibit No. 3.

JUDGE MULLIN: Any objection?

MR. FERLAINO: No objection.

JUDGE MULLIN: General Counsel No. 3 is received.

(The document above-referred to heretofore marked General Counsel's Exhibit No. 3, was received in evidence.)

Q. Mr. Colavito, after receiving what has been accepted into evidence as General Counsel's Exhibit No. 3 did you then have a meeting with Mr. Ferlaino? A. Yes, I did.

Q. What date as best you can recall was this meeting? A. It was June 26th.

Q. Where was the meeting held, sir? A. In the office of Adams Iron Works.

Q. Who was present? A. Bonanno, his attorney Mr. Ferlaino, Ton Schifano, the vice president of the Union and myself.

59 Q. Would you please tell us what was said at this meeting and who said what? A. Joe Bonanno again spent a considerable part of the time saying he can't have a shop with all the men in the Union.

Again, you know, we talked about the economy of the industry and what the unit costs are and things like that.

His attorney there said he hasn't had a chance to look at the contract.

We discussed a couple of issues but in reality this is the first time that he seen the contract and he would like some time to look over the contract and that he would get back to us.

That was the gist of the meeting.

Q. Do you recall anything else that you said to Mr. Ferlaino and Mr. Bonanno at that meeting? A. I told him we felt that we had a contract, we negotiated in good faith, we made concessions.

If there was a concession of a minor part they wanted to discuss, to make some kind of a judgment we would be glad to do this and take it under advisement, but if they were looking to go through another complete negotiations we weren't ready to do that.

60 MR. BLYER: I would like to have this marked as General Counsel's Exhibit No. 4.

(The document above-referred to was marked General Counsel's Exhibit No. 4 for identification.)

Q. (By Mr. Blyer) Mr. Colavito, will you identify what has been marked for identification as General Counsel's Exhibit No. 4? A. It is a

letter from the Ferlaino & Fusco firm signed by John Ferlaino saying that they looked over the contract and that they – unless we were ready to give them substantial and far reaching modifications in the benefits and wage rates –

MR. FERLAINO: I think the letter speaks for itself, your Honor. I don't think there is any reason for this man –

JUDGE MULLIN: No objection to the letter?

MR. FERLAINO: No objection.

JUDGE MULLIN: General Counsel No. 4 is received, there being no objection.

(The document above-referred to heretofore marked General Counsel's Exhibit No. 4, was received in evidence.)

Q. (By Mr. Blyer) At any time since the signing of the contract on the 29th of May, Mr. Colavito, has the Company honored or abided by the 61 contract? A. No.

MR. BLYER: I would like to have this marked as G.C. 5.

(The document above-referred to was marked General Counsel's Exhibit No. 5 for identification.)

Q. (By Mr. Blyer) You have been handed, Mr. Colavito, what has been marked for identification as General Counsel's Exhibit No. 5.

Can you just briefly identify that? A. It is a communication sent by the secretary of our Local Union on behalf of six employees.

Q. Don't try to read the letter. Just tell us who sent it. A. John Zito, Secretary-Treasurer of the Union, sent it to Adams Iron Works that he is making an unconditional application for reinstatement of certain employees.

MR. BLYER: Your Honor, I offer this as General Counsel's Exhibit No. 5.

JUDGE MULLIN: General Counsel's No. 5 for identification has been offered.

Is this a communication that the Respondent received, Counselor?

This document has been offered as General Counsel's No. 5 for identification, you received this?

62 MR. FERLAINO: Yes, we received it.

JUDGE MULLIN: Very well, General Counsel's No. 5 is received in evidence.

(The document above-referred to heretofore marked General Counsel's Exhibit No. 5, was received in evidence.)

Q. (By Mr. Blyer) At any time, Mr. Colavito, have any of the employees listed in General Counsel's Exhibit No. 5 been offered re-employment with Adams Iron Works? A. To the best of my knowledge, no.

Q. Have any of them in fact worked for Adams Iron Works at any time after the date of General Counsel's Exhibit 5? A. I don't believe so.

MR. BLYER: Can we go off the record a moment, your Honor?

JUDGE MULLIN: Off the record.

(Discussion off the record.)

JUDGE MULLIN: On the record.

MR. BLYER: Your Honor, I have no further questions of this witness, but before I finish this part of my case I would like to offer at this time the prior Board case in this matter as General Counsel's Exhibit No. 6.

Contrary to Mr. Ferlaino's statement I believe the case, in addition to

63 having relevance on the 8(a)(5) issue and history which I think is intimately connected with this case and must be considered in conjunction with it, you will note from the case that there was an 8(a)(5) finding therein, finding

there based upon the imposition during negotiations of a legal condition of bargaining among other things and that in point of time it is in the months before the facts surrounding this case, but in addition, your Honor, I don't mean to underscore the importance of what I have already said in addition, your Honor and I'm offering it for a number of other purposes.

As you will note the complaint in this case alleged that four of the seven individuals named in the letter of June 13th that has been introduced into evidence as General Counsel's Exhibit No. 5, they are listed in the complaint, four names were found to be unfair labor practice strikers by the Board in that case and I think without the case you don't know that and I think it is appropriate for that purpose to establish that a finding has been made that there are unfair labor pracitce strikers and they're entitled to offers of reinstatement upon their uncondtiional application for such.

MR. FERLAINO: If there is work.

64 MR. BLYER: In addition, your Honor, I think there are other elements to the case that are appropriate for this case.

For example, with regard to the appropriateness of the unit which is alleged in Paragraph 8 of our complaint, you will note that there the Board specifically found that after a finding, after reviewing the facts, that the unit alleged in Paragraph 8 of the complaint was and is an appropriate unit for collective bargaining purposes, and that the period of time is such, that such would also be the case today.

In addition, your Honor, I think the prior Board case is relevant and is being introduced by me for purposes of both to establishing Paragraph 9 of the complaint which relates to the exclusivity of this Union as a representative of the employees in the appropriate unit.

So for all those purposes and at least at this time, perhaps others which I will come across, note later on in this file or in a brief, I think that it is

appropriate at this time that we accept into evidence General Counsel's Exhibit No. 6, the prior Board case.

I note that General Counsel's Exhibit 6 is the A.L.J. decision and I would like also to have marked and introduced as General Counsel's Exhibit
65 7 the Board's adoption of the Administrative Law Judge's decision.

* * * * *

General Counsel's Exhibits 6 and 7 are received.

(The documents above-referred to were marked General Counsel's Exhibits Nos. 6 and 7 and were received in evidence.)

JUDGE MULLIN: Do you have any further questions of this witness, Counsel?

MR. BLYER: No, your Honor, I do not at this time.

JUDGE MULLIN: Cross-examination, Counsel.

MR. FERLAINO: Yes.

CROSS-EXAMINATION

* * * * *

67 Q. (By Mr. Ferlaino) Do you know whether Giavanna Cirilli was working elsewhere from any time from July 2nd to date? A. Well, I have heard.

Q. Do you know directly? A. No.

Q. Have you any personal knowledge? A. No, I don't.

Q. The same answer would apply to Antonio Civello? A. No, I would not.

Q. And to Gaspare Sontamaria, you have no personal knowledge of him being employed during this period? A. No, I don't.

Q. And the same thing applies for Gibaldi; is that correct? A. Yes.

Q. And the same thing applies to Vito Chimenti; is that correct?

A. That is correct.

Q. You would say the same answer applies to Nick Sorrentino; is that correct? A. That is correct.

Q. Would it apply to John Mazzanti? A. I know he wasn't working.

Q. Do you know whether he is working now? A. He was working.

68 I think he has been ill. I have heard that he was ill lately so may not be working, but he was working a short time ago.

Q. Do you know what he is doing, what kind of illness? A. No, I don't know.

Q. Mr. Colavito, isn't it a fact and the truth that in the year prior to the strike, July 2nd, '74 there were three men out of this man's shop, his little store, little 20-foot store on Butler Street that were members of your Union, John Mazzanti, Giavanna Cirillo and Nick Sorrentino?

MR. BLYER: Objection, your Honor, relevance.

JUDGE MULLIN: Objection sustained.

MR. FERLAINO: Will you take it subject to connection, your Honor?

JUDGE MULLIN: How many questions do you have?

MR. FERLAINO: Just this one question.

JUDGE MULLIN: All right.

MR. FERLAINO: One other following.

Q. (By Mr. Ferlaino) Sir – A. Do I know of those three men?

Q. Being the only members of your Union? A. Prior?

Q. Prior? A. Well, I just know about Giavanna Cirillo, that is all

69 I know.

Q. You don't know if the others even became members? A. No. As I said I don't know who is a member, who isn't a member.

Q. You said on your direct testimony that Adams purchased iron from mills. Do you know this as a fact? A. I know trucks deliver steel to them.

Q. Do you know whether he bought it only from a warehouse? A. No, I would not know that.

Q. So do you know where he bought his steel? A. I know he bought it directly from overseas or from a mill too, I don't know.

Q. When you had the conversation in March with Jack D'Angelo you said that George was present, Jack D'Angelo and a John or Jim; is that correct? A. That is correct.

Q. Those were the only persons that were present at that time? That was your direct testimony; is that correct? A. Yes.

Q. You have been to the shop over on Butler Street a number of times over the years, have you not? A. Once or twice.

70 Q. Ever seen Jack D'Angelo there? A. I have only been there during the strike and I never saw Jack D'Angelo there.

Q. At any time did you ask Joe Bonanno whether Jack D'Angelo was an officer of this corporation; yes or no? A. If I did, did I ask Joe?

Q. Yes. A. No, I did not.

Q. You know that Adams Iron Works, Incorporated is a corporation, do you not? A. I'm not just sure if it is a corporation or not.

Q. Well, I show you a document here and I ask you the name written in front of this document which is in evidence? A. It says incorporated.

Q. It has been marked for identification.

I'm sorry, it is not in evidence.

Subject to my exception even as to that introduction and would that refresh your recollection as to it being a corporation? A. Yes.

Q. There is another document that has been presented. Does this show you wrote to a corporation? A. The office did, yes.

Q. The office is under your direction, of course? A. Yes.

71 Q. This holds true at all times as to the question I asked you whether you ever asked Joe Bonanno whether Jack D'Angelo was a corporate officer with respect to Adams Iron Works? A. I never asked him, no.

Q. With respect to these classifications you talked about, one mechanic for six apprentices, et cetera, as I understand it – the other way, I'm sorry, six apprentices for – A. Six mechanics.

Q. Six mechanics for one apprentice? A. Yes.

Q. Was it your intention not to have these apprentices in the Union for a short period of time or something of that nature? A. No.

The intention was that he would not be – he would be less restrictive by being restricted to only one apprentice.

He would have to have more higher paying labor which meant mechanics, so therefore we gave him greater flexibility by eliminating the apprentice classification.

Q. Does your Union cover men who do not handle steel such as men who paint, men who do concrete work, men who do carpentry? A. Yes,

72 our people do that work too.

Q. Are they required to be Unionized, in your Union? A. Oh yes, it is a production and maintenance unit.

Where people do machinists' work and, you know, real sophisticated classifications too.

Q. When you met on May 8th at the Holiday Inn you met Jack D'Angelo, Schifano and Schonfeld and George and you separated from Joe Bonanno who sat in the lobby while you went into a coffee shop; is that correct? A. Joe said he would wait for Gaba while we went in.

Q. And you did all the discussion at that time; is that correct? A. Joe was not present.

Q. Do you employ a man by the name of Philip or Philippe Manga?

A. Employ? No, he is one of our members.

Q. One of your members? A. Yes.

Q. Do you know that he was engaged in strike activity in front of Adams Iron Works' shop? A. I know he was picketing in front of the shop.

Q. Were you aware of the fact that he was involved in stabbing Mr. Bonanno? A. No, I'm not aware of that.

Q. Were you aware that the man was brought into Criminal Court?

73 MR. BLYER: Your Honor, I would object to any testimony relating to Mr. Manga.

This case has nothing to do with any type of, needless to say, criminal action nor is there any claim here, at least in the papers as I understand it, that the Union is in any way responsible with regard to what happened or even had knowledge of what happened, if in fact it has happened and I would say it is totally irrelevant to the case with regard to what may have happened with Mr. Manga.

MR. FERLAINO: It is recited in the Answer. It is in the papers.

JUDGE MULLIN: You may bring that up in your own case if you feel it is relevant.

Q. (By Mr. Ferlaino) This man incidentally is a member of your Union; is that correct? A. Yes.

Q. He was picketing there at your request? A. He was picketing there, yes.

Q. At the request – A. At the request of the Union, yes.

Q. Did you engage a counsel for him with respect to and action brought against him by the public authorities? A. It is possible if he was in Court the Union would protect him, yes.

74 Q. And would pay the cost of any counsel that was involved in this

protection? A. I'm assuming. I don't know what took place, but I'm assuming if anything happened on the picket line he would be defended.

Q. Do you know that he pleaded guilty? A. No.

* * * * *

75 Q. (By Mr. Ferlaino) At any time did you have any documents in your possession whereby the Attorney Schonfeld wrote you and said that he was representing Adams Iron Works, Incorporated? A. No, we have no communication with Schonfeld.

Q. Did Jack D'Angelo say that he was a friend of his? A. No, I said Jack D'Angelo said "He is our Attorney."

He was introduced to me.

When I went to the meeting I found them all in the lobby.

Q. You didn't know this Mr. Schonfeld previously; is that correct? A. No, I never met him before.

Q. And you said at that time the attorney and George said nothing; is that correct, did no talking? A. George did not talk.

Schonfeld did a very minimum amount of talking.

Q. You have no written document indicating that Mr. Jack D'Angelo was an officer of this corporation in any respect, have you? A. No, I do not.

Q. As a matter of fact you don't know whether he is an officer of this corporation or not, do you, sir? A. Outside of what he told me

76 and what Joe told me to do.

Q. He said that he was going to take it up with Joe; isn't that what he said? A. At this May 8th meeting, yes.

* * * * *

Q. When Mr. Gaba came in to talk to you on May 28th and up to that point you had been negotiating with him, had you not? A. May 28th

I didn't meet with Mr. Gaba. May 8th I think I met with him.

Q. You say it was on May 8th that you met with Mr. Gaba? A. Yes.

Q. Then on May 8th he asked you to go over this matter with him, didn't he? A. The meeting was arranged prior to May 8th.

Q. Just one moment, didn't he ask you to go over this matter? A. Go over what matter?

77 Q. The negotiations that you and Jack had engaged in in the coffee shop? A. He wanted to start and negotiate the entire contract with me, yes.

At that point I said I was kind of confused because I was under the impression that I was supposed to negotiate with Jack and I wasn't going to negotiate with two parties.

I wanted to know what the situation stood.

Q. On May 28th or 29th you state that you met with Mr. Jack D'Angelo, George and the Attorney Schonfeld; is that correct? A. I didn't say George, I said Schonfeld.

Q. Schonfeld and you were there alone? A. No, with Schifano.

Q. I show you this contract, this Exhibit for identification and ask you whether it says Adams Iron Works, Incorporated on the front? A. Yes, it does.

Q. I ask you on the signature page what it says at the top where it says name of company? A. It says Adams.

Q. And there is a signature below that; is that correct? A. That is correct.

78 Q. Does it give any officer of that? A. No, it does not.

Q. Just a plain signature; is that correct? A. That is correct.

Q. In contrast of the signature of the Union indicating the name of

the Union and the Local number; is that correct? A. That is correct.

Q. It is signed by you; is that correct? A. That is correct.

Q. In what capacity? A. As president.

Q. It is signed by who else? A. The recording secretary.

Q. In what capacity? A. Herbert Hayes, Recording Secretary.

Q. On the meeting of June 25th, June 26th, 1974 which I was present with Mr. Schifano, yourself and Mr. Bonanno in the office didn't Mr. Bonanno tell you at that time that Mr. D'Angelo had no authority to sign this contract? A. Yes, he did.

Q. Didn't I ask you at that time, Mr. Colavito, would you be willing or didn't we have a general discussion about this industry and that 98 per cent of the small two to ten men shops in this business, in this iron works business, this fence business was non-Unionized?

79 Didn't we have a discussion on that basis? A. We had a discussion on that industry and you made many claims which I discussed with you.

Q. Didn't Mr. Bonanno show you this list of names in the yellow pages and tell you that these are all of the ships bigger than him, these are the yellow pages in the Brooklyn yellow pages.

Please take a look at them. A. I'm familiar with that.

Q. Didn't he tell you that this industry is 98 per cent non-Unionized except for the major shops? A. Joe has made many claims.

He said many claims, yes.

Q. Didn't he tell you that on a contract as submitted by you that he would be put out of business overnight? A. He has said that continuously.

Q. Didn't he say that if he were to enter the contract as submited that his cost would be as he expressed it, any job that he would take costing $700 to him these people in here could do the job for $500 and he would certainly be put out of business; didn't he express that to you? A. He

said "I can't have all the guys in the Union," he has always maintained that.

I can't have most, most I have is half a shop in the Union and I

80 wouldn't have everybody covered by the contract.

That has always been his claim.

Q. Isn't it a fact that over the years he only had three men in the Union? A. I don't know what he had over the years.

I never serviced this job.

I just got familiar with it during the strike.

Q. At that time didn't I ask you whether you would be willing to make substantial changes in the contract that I might try to urge on my client and you said that you would not make any changes? A. I said what I said before, that we had a contract, we felt we had a contract.

If there was a question of making some minor adjustments we would address ourselves to that.

Q. You are talking about a minor adjustment, you were talking about like maybe you had a little clause in here for a coffee break running maybe 12 minutes and you would like to reduce it to 10 minutes or something of that nature? A. You know, if we were to –

Q. One moment, please. A. Well, I want to tell you, I want to characterize what you want to call minor or major.

81 I think we made some minor concessions.

We changed the classification system, we changed a premium time provision.

We did a lot of things here which no one else has. They are major changes in our eyes.

* * * * *

Q. (By Mr. Ferlaino) Didn't I thereafter write you on July 1st, Exhibit No. 4 in evidence, requesting a further conference to discuss the

negotiations of the new contract? A. With the conditions if we had, we were offered some substantial and far-reaching changes –

Q. Did you at any time contact my office with respect to that?

A. No, we turned it over to our attorney.

Q. But you never contacted my office; is that correct? A. No, our attorney was handling the matter from that point on.

Q. And you don't know whether the attorney called us or not, do you? A. I don't think they saw any need for it either, so I don't know if they did.

82 Q. That letter, if I read it correctly, offers to negotiate with you, did it not? A. Only on the condition of we being ready to offer substantial and far reaching modifications.

You set conditions down for the meeting.

Q. As a matter of fact, didn't we meet out in the hall and I asked you the same thing and you said no change? A. The same thing, the same way you left with us, you wanted us to drop the funds and things like that.

* * * * *

Q. (By Mr. Ferlaino) Basically when you have these negotiations such as we had the negotiations on June 26 in Mr. Bonanno's place of business as I recall it you do most of the talking or all the talking as President

83 of the Union and the representative of the corporation talks to you; isn't that correct? A. Well, as far as the Union side, the Union decides on a spokesman.

The other side we don't.

Q. You are the spokesman; is that correct? A. For the Union if I'm President, yes.

Q. And Mr. Schifano sitting here with his arms folded sits there pretty much listening and you consult with him from time to time; is that correct?

A. Yes.

Q. He doesn't specifically enter into negotiations? A. If I'm present.

Q. When you are present? A. That is correct.

Q. You actually have the final work? A. If I'm the spokesman.

Q. You are the spokesman. A. Generally if I'm president.

Q. About how many paying members do you have in your Union? A. About 3,500.

Q. How many? A. About 3,500.

Q. Do you have with you today the contract that was prior, that you
84 had prior to this contract of May 29, 1974? A. The one that expired June 30th, '73, do I have it with me?

Q. Yes. A. No, I don't have it.

Q. This contract over prior contracts have many important benefits to Union members, does it not? A. Has added.

Q. Added? A. As added, the wage increase and some increases in terms.

Q. Separation pay, a lot of other fringe benefits? A. I will enumerate them.

There was a wage increase 35 cents to 40 cents an hour.

There was an increase in the welfare pension benefits, a severance pay clause was established of one per cent and maybe perhaps a holiday.

* * * * *

Q. (By Mr. Ferlaino) You know that Adams Iron Works, Inc. is
85 not a partnership; is that correct? A. I don't draw the fine distinctions between corporations and partnerships.

I'm not that, you know, familiar.

Q. You know what a partnership is, don't you? A. Two people are partners or three people.

I'm not sure I know the legal status of it.

Q. A corporation is something that has obtained a certificate of incorporation.

I'm sure you have had – A. You know, I had some general vague idea about it but I'm not sure I can be precise in expressing it.

Q. You understand a partner of a partnership is not a corporate officer; is that correct? A. You know, most of our shops are small shops and the employers are familiar with the workers.

Q. One moment, please, just answer. A. I'm trying to understand you.

Q. A partner is a partner, not a corporate officer; isn't that correct?

You are a corporate officer of the Union, are you not? A. Sir?

Q. Just one moment, are you the president of a Union? A. Yes, I am.

86 Q. You are an officer of the Union; is that correct? A. Yes.

Q. You are not a partner of this Union, are you? A. It is not a business organization.

Never heard of a Union referred to as a business organization.

* * * * *

Q. You are aware, sir, that the Union never covered all the employees in the shop, are you not, sir? A. It came out during the trial.

I mean –

Q. That they were not? A. During the strike.

Q. They were not covered? A. The Company claimed some of the workers were not members of the Union, yes.

Q. You are aware that from your corporate records that we only contracted to the Union in prior years with respect to three men? A. No, I

87 wasn't aware of that.

Q. You were not? A. No, if I was aware I would have pressed the case.

* * * * *

88 ANTONIO SCHIFANO

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn by Judge Mullin, was examined and testified as follows:

89 DIRECT EXAMINATION

Q. (By Mr. Blyer) Mr. Schifano, would you please state and spell your full name? A. Antonio Schifano, S-c-h-i-f-a-n-o.

Q. What is your position with Local 455? A. I'm the vice president of the Local.

Q. How long have you held that position? A. Two years.

Q. Did you attend the meeting of May 8th of 1974 at the Holiday Inn at LaGuardia Airport? A. Yes, I did.

Q. Will you tell us what happened on that day?

MR. FERLIANO: I will object to the testimony on the same grounds as the previous witness, on the grounds that it is not binding on my client.

JUDGE MULLIN: Yes, you have a standing objection to this entire line of testimony.

THE WITNESS: Could you repeat?

Q. (By Mr. Blyer) Will you tell us what happened on that day? Start from the beginning on May 8th of 1974. A. I see.

I got there in front of the building of the hotel.

I found Mr. Bonanno, Mr. D'Angelo, a fellow named George and Mr. Schonfeld.

90 Q. Go on? A. We say hello to each other and in the meantime while Mr. Colavito came in with his car.

We waited for him in front of the lobby, in front of the building.

When he came in we walked into the building.

Q. Had you met Mr. D'Angelo or Mr. Schonfeld or George before that day? A. Well, I know Mr. D'Angelo but I never met Mr. Schonfeld before.

Q. What about George? A. No.

Q. Mr. Bonanno obviously you knew? A. Yes.

Q. How did you know Mr. D'Angelo? A. Well, has a business in my neighborhood.

Q. On what basis did you know him? A. I just know him like this.

It is the neighborhood. He has a business in our neighborhood.

Q. When you arrived on the scene at the Holiday Inn who introduced you to these gentlemen, as best you can recall? A. I believe it was Joe Bonanno.

Q. Do you remember how he introduced these people to you? A.

91 No, I don't remember.

Q. You testified that you went inside. Tell us what happened.

Where did you go? A. I believe we went to the coffee shop.

Q. Who is we? A. It was me, Mr. Colavito, Mr. D'Angelo, Mr. Schonfeld, Mr. Bonanno and Mr. Bonanno left right away, went outside to look for Mr. Gaba.

Q. Where did everyone else go? A. We sat at a table.

Q. What happened? Tell me. A. We ordered some coffee and Mr. Colavito, Mr. D'Angelo started to talk about the contract for Adams Iron Works, and –

Q. What do you recall specifically being said? A. Well, I recall Mr. Colavito making some proposals, some changes in the contract.

Q. What do you remember specifically? A Well, it was about classification.

MR. FERLIANO: You asked the question, Counselor

Q. Do you remember specifically what he said about classification?

92 A. Yes.

The proposal would eliminate the apprentice classification and allow an extra number of helpers to be hired or to be used in the shop with the classification as a helper and be allowed to use tools which is different from our outstanding contract, from our standard contract.

Q. Do you remember any other subjects being specifically discussed?

A. No, none in regard to the contract.

Q. What role did you play at that meeting? A. I just listened.

Q. What else do you recall being said at that meeting?

* * * * *

JUDGE MULLIN: Were you asking as to any further questions with reference to the contract?

MR. BLYER: Just about subjects in general. The question is not re-

93 lating to any other issues being discussed but anything else that was discussed at the meeting.

THE WITNESS: Yes, there was further

Q. (By Mr. Blyer) What was said that you recall? A. After this discussion we got up and I think Mr. D'Angelo paid the cashier and we walked out.

Prior to this Mr. Gaba came in and asked for Joel. Somebody told him that he was outside looking for him.

We walked out in the lobby and we met Mr. Bonanno there.

Q. Who is the we now that walked into the lobby? A. It was me, Mr. Colavito, Mr. Schonfeld, this fellow George and Mr. D'Angelo.

Q. What happened in the lobby? A. There was some discussion there between Joe, Jack and Mr. Colavito and I don't recall exactly what was

said, a brief discussion, and then me, Mr. Colavito and Joe Bonanno walked into the coffee shop again.

Q. Where did you go at this time? A. We went to a table where Mr. Gaba was sitting.

Q. Who is the we that went to the table where Mr. Gaba was sitting? A. It was me, Mr. Colavito and Mr. Bonanno.

Q. What happened there? A. Well, there was some discussion

94 between Mr. Colavito, Mr. Bonanno and Mr. Gaba.

Mr. Bonanno was talking about the expenses of the contract, that it was too expensive for him and he couldn't afford to have everybody in the Union.

Mr. Gaba, I think, told him that he couldn't use that argument any more.

I don't remember the exact words that he said.

Mr. Gaba also started to discuss issues of the contract and at this point I think Mr. Colavito told him that he was confused, that there was two parties negotiating for the same company.

He wanted to know who he was supposed to negotiate with.

I think Gaba said something, I don't care or whatever Joe wants, I don't remember the exact words that he used, and Joe Bonanno said to Bill Colavito "You work it out with Jack."

Q. What happened at that point? A. I believe at that point we got up and went outside, me and Mr. Colavito.

I don't remember who walked out with us.

I believe we left after that, I'm not too sure.

Q. Do you remember any conversation in the lobby?

* * * * *

95 Q. (By Mr. Blyer) Do you recall any conversation prior to leaving,

in the lobby? A. You mean before we walked into the shop again?

Q. No, before you left the building? A. No, I don't recall that.

Q. Do you recall if Mr. Gaba left with you or if he stayed in the coffee shop? A. I think he stayed in the coffee shop.

Q. A few days after this May 8, 1974 meeting did you have occasion to visit Mr. Schonfeld? A. Yes.

96 Q. Will you tell us what you were doing on that occasion? A. Well

MR. FERLAINO: I will object to all of this testimony.

It can't be binding.

There is no proof that Schonfeld was the attorney for this man, none whatsoever.

Any conversation between him and Schonfeld is not binding on Respondent.

JUDGE MULLIN: As I ruled earlier that is, of course, an issue and so I will receive the testimony as to conversation with Schonfeld subject to the establishing that Schonfeld had some authority.

If he didn't have any authority –

MR. FERLAINO: Most respectfully, none has been shown and I think before anything be offered the proof of the retention of this attorney be shown, otherwise we are taking testimony that may color this whole issue.

I think Counsel should be required to prove that he is the attorney.

He has no such proof in the record whatsoever at this time.

Proof would be quite simple, your Honor.

JUDGE MULLIN: Objection overruled for the time being.

97 MR. FERLAINO: Exception.

Q. (By Mr. Blyer) Will you tell us what happened when you visited Mr. Schonfeld shortly after May 8th? A. Yes. I bring him, I believe, two copies of the contract that incorporated the changes that were discussed

at the meeting, at the prior meeting.

Q. Where did you meet Mr. Schonfeld? A. At his office.

Q. Where is that? A. I don't know the number. I know it is in Court Street.

I don't remember the number of the building.

JUDGE MULLIN: You say it is in Court Street?

THE WITNESS: Yes.

JUDGE MULLIN: Here in Brooklyn?

THE WITNESS: Yes.

Q. (By Mr. Blyer) Did you attend the meeting on May 28th at the same Holiday Inn at LaGuardia Airport? A. Yes.

Q. Who was present on that occasion? A. It was me, Mr. Colavito, Mr. D'Angelo, George and Mr. Schonfeld.

Q. Where did you meet on that occasion? A. I believe we met in the lobby and then we went into the coffee shop.

98 Q. What was discussed at that meeting and who said what?

* * * * *

Q. (By Mr. Blyer) You can tell us what was said and who said what? A. Well, there was conversation between Mr. Colavito, Mr. D'Angelo and Mr. Schonfeld.

Q. What specifically do you recall being said? A. Well, one of the things I recall was that they opened up the copies of the contract that they had and they looked over the changes and they talked about the changes.

I believe they talked about Joe being a foreman in the shop, being allowed to be the foreman.

Also that Mr. Mazzanti would be one of the first ones to be recalled back to work.

That was I think a request by Mr. Colavito.

Oh, a termination, you know, the contract was drawn that it would
99 terminate in '75.

I believe Mr. Schonfeld brought it out that he wanted a longer, you know, they would prepare a longer contract and Mr. D'Angelo too and Mr. Colavito agreed to give him, you know, a longer contract and I believe they made changes on the document.

Q. What specifically do you recall being said about Mr. Mazzanti?

A. Mr. Mazzanti was discussed twice.

I think it was discussed when we asked that he would be – Mr. Colavito asked that he would be recalled right away if there was work for him to do and when we discussed the part that when he is supposed to go back to work.

Q. What was said? A. I think Mr. D'Angelo suggested that we bring – Mazzanti go back to work to start the next week.

MR. BLYER: For your Honor's information May 29th I understand was a Wednesday.

THE WITNESS: 29th.

MR. BLYER: May 29th was a Wednesday. I think the calendar would show that.

Q. (By Mr. Blyer) Now, was this meeting on May 28th or May 29th as you recall? A. I believe it was May 28th.

100 Q. You believe it was May 28th? A. Yes.

Q. What other subjects do you recall being discussed at this meeting that was held on I think either May 28th or May 29th?

MR. FERLAINO: He said May 28th.

MR. BLYER: On May 28th.

MR. FERLAINO: Don't just try to put words in the witness' mouth.

MUDGE MULLIN: Objection sustained.

Q. (By Mr. Blyer) At this meeting, the second meeting that you

attended at the Holiday Inn what other subjects do you recall being discussed? A. I think what was discussed at the time of the signature or a little before that, I believe Mr. Colavito asked about Mr. Bonanno.

Q. What did he say? A. Well, Mr. Colavito asked where is Joe and I believe Mr. D'Angelo answered he is not here.

At the time of the signature Mr. Colavito asked whether Mr. D'Angelo was, you know, Joe had to sign the paper too and I think Mr. D'Angelo asked his lawyer.

He said "I could sign it?"

He used the words "I could sign it?" and then he asked the words being I sign it and the lawyer said yes.

101 Q. What happened at that point? A. They signed the contract.

Q. Thereafter did you take any action with regard to the picketing that was going on at Adams Iron Works? A. Yes, I did.

Q. What did you do? A. Well, I did two things, contacted the office and instructed the person who answered the phone if any picketer was taking from Adams Iron Works to tell to go home, that the strike was settled, and also —

MR. FERLAINO: I will object to this, Judge.

This is far beyond the issues here and not binding on us.

He could have gone to California during this time and said that and why should it be binding on this Respondent?

JUDGE MULLIN: Were the pickets withdrawn?

THE WITNESS: Yes.

Q. (By Mr. Blyer) When was the picketing withdrawn, Mr. Schifano?

A. The same day.

Q. As what? A. I believe it was May 28th.

Q. The same day as you met at the Holiday Inn and signed the contract and the contract was signed? A. Yes, after.

102 Q. On June 3rd, 1974 did you go down to Adams Iron Works?

A. Yes.

Q. In Brooklyn? A. Yes.

Q. What time was that? A. About 7:30 in the morning.

Q. Did you go yourself or with someone or many people? A. No, there was someone with me, I don't know. John Mazzanti.

Q. What happened when you got to the Adams Iron Works? Take it step by step. A. Well, I walked into the shop and Joe Bonanno was on top of this truck, I believe unloading or loading something.

Mazzanti was with me.

As soon as he walked in Joe said "What is this? What you guys doing here?"

So I told him.

I said — he asked me, he says "What he is doing talking about Mazzanti, what do you want here?"

So I told him he is coming back to work as per our agreement.

He said to me, he says "Over my dead body."

103 MR. FERIANINO: What date was this, Counselor?

MR. BLYER: June 3rd.

A. (Continuing) I said "Joe, what is the matter? "We have an agreement, what is going on now?"

He says, "We don't have no agreement," he says, "The kind of contract that that guy signed," he said "I could have gotten myself, I didn't need him."

Q. What happened next? A. Then I pleaded with him, you know, to reconsider, to see — I didn't know what was going on and he kept saying the same thing.

Then he said that he couldn't survive with everybody in the Union, that is why he was objecting to it.

He just couldn't make it with everybody in the Union and that is the reason why he was objecting to it.

Q. Was anything else said that you recall? A. He also said we would get a letter from a new attorney.

He said that he fired the attorney and something to this effect, that we would get some communication from somebody.

Q. Do you remember anything else taking place at that June 3rd meeting? A. No.

Q. On June 26th of 1974 did you and Mr. Colavito meet with Mr. Bonanno and Mr. Ferlaino at Adams Iron Works? A. Yes.

104 Q. Will you tell us what was discussed during the June 26th meeting and who said what as best as you can remember? A. Eell, we walked in and Mr. Colavito and Mr. Fusco and I believe was Mr. Fusco at that time.

I went in — was Mr. Ferlaino, I'm sorry.

I thought it was Mr. Fusco there but it was this gentleman who is here today.

Q. Who represents Adams Iron Works, Mr. Ferlaino? A. Yes.

Q. Okay, go ahead. A. They discussed, Joe Bonanno was saying about this unorganized shops and he mentioned a couple of names near his neighborhood, like Italian Art Iron Works and he mentioned another name which I don't recall.

Also Mr. Ferlaino started talking about the issue in the contract and Mr. Colavito told him that we believe we had a contract and we were making some modification to help him if we could some minor things.

Also Mr. Ferlaino said that whatever agreement we had in our hands was illegal.

Q. Was what? A. The contract that we had, he said that it was not binding on his client.

105 Q. Did he say why? A. No. Maybe he said it. I don't recall.

Q. How did that June 26th conversation end? A. Well, Mr. Colavito told him that we were not ready to renegotiate a contract and that if there was anything that they wanted to change in particular to let us know, minor things to change, to let us know and would discuss it with them.

That is how we left.

Q. Since the contract execution or signing in late May of 1974 has the Company honored and abided by the contract at any time? A. No.

Q. With regard to the employees that the Union made unconditional request for reinstatement on June 13th of '74, to your knowledge have any of these employees been offered reinstatement by Adams Iron Works?

A. Not to my knowledge.

Q. In fact have any of them been rehired? A. Not to my knowledge.

MR. BLYER: Thank you, your Honor. I have no further questions.

JUDGE MULLIN: Cross-examination.

CROSS-EXAMINATION

Q. (By Mr. Ferlaino) Mr. Schifano, if I don't pronounce your name

106 right let me know.

It is almost as difficult as mine.

Mr. Schifano, you have been the vice president of the Union you say for two years; is that correct? A. Yes.

Q. What did you do before that, sir? A. I was employed in an iron shop.

Q. In what capacity? A. As a finisher.

Q. How long did you work at that? A. You mean in that capacity or in that shop?

Q. In that shop? A. In that shop I believe I worked for about five years.

Q. What is the name of the shop? A. Morsol Iron Shop.

Q. Where are they located? A. It is in 26th Street, Brooklyn. I think it is between 4th and 3rd. I don't know the number.

Q. How many people do they employ? A. Well, it fluctuates. Sometimes there's 25, 20. I believe about 20 as a regular basis.

Q. Is that a Union shop?

MR. BLYER: Objection, your Honor, to the relevance.

107 JUDGE MULLIN: Are there going to be many questions about this?

MR. FERLAINO: It is about the last one.

A. Yes, it is a Union shop.

Q. When you met with Mr. Bonanno, Mr. D'Angelo, George and Mr. Schonfeld on May 8th, 1974 and Mr. Colavito the conversation between them and Joe was outside of the coffee shop waiting for Mr. Gaba; is that right?

A. Yes.

Q. Mr. Gaba as you remember was with Joe or Adams' lawyer?

A. I don't understand the question.

Would you repeat?

Q. There was a prior case earlier this year; is that correct? A. What do you mean, another case?

Over here?

Q. Yes. A. Yes, there was.

Q. You were present, weren't you? A. Yes.

Q. And there was a lawyer by the name of Gaba; isn't that right.

A. Yes.

Q. Richard Gaba? A. Yes

108 Q. And he handled the case, right? A. I think he came in at the later part of the case, I'm not sure.

Q. And all the communications with the Union were with Mr. Gaba, were they? A. I wouldn't know that.

Q. The first time you met Mr. Schonfeld was on May 8th; is that correct? A. Yes.

Q. And Mr. D'Angelo introduced you to him; is that right? A. I'm not sure.

I believe it was Mr. Bonanno.

Q. And he introduced Joe D'Angelo to you as well, did ne not?

A. Joe D'Angelo?

Q. Jack D'Angelo? A. Yes, I believe so.

Q. And he introduced Mr. Schonfeld and said "This is Mr. D'Angelo's lawyer," didn't he. A. I don't recall.

Q. Yes or no, sir? A. No, I don't recall.

Q. You don't recall?

109 You saw subsequently Mr. Gaba came there, is that right? A. Yes, when we were sitting at the table.

Q. Just answer the questions.

Did he come later?

A. Yes.

* * * * *

Q. Were you introduced to Mr. Gaba at that time? A. No.

Q. Did you know him? A. Sure.

Q. You had seen him in the Court; is that right? A. Yes.

Q. You had seen him defend Adams; is that correct? A. Yes.

110 Q. And you knew him as Adams' lawyer, did you not? A. Well, as the prior case, yes.

Q. And he was there again.

He certainly wasn't your lawyer, was he?

A. No, he wasn't my lawyer.

Q. He wasn't Mr. Colavito's lawyer, was he? A. I don't think so.

Q. And he wasn't Mr. D'Angelo's lawyer, was he? A. I don't believe so.

I don't know.

Q. That leaves Mr. Bonanno, doesn't it? A. I don't know.

Q. Didn't he come in as Mr. Bonanno's lawyer?

MR. BLYER: Your Honor, we are willing to stipulate that Mr. Gaba represented Adams Iron Works.

MR. FERLAINO: That is all I want to know.

JUDGE MULLIN: Very well, the stipulation is received.

Q. (By Mr. Ferlaino) During the conversation about the changes Jack D'Angelo said that he knew Joe Bonanno and that they were friends?

A. I don't believe he said that during the conversation when I was present.

Q. Didn't he say that he knew Jack, Joe Bonanno about 15 years and he wanted to help him?

111 A. Not at that time –

Q. You don't think he was there not to help him, do you? A. Well, I don't know.

He didn't say that he was his friend at the table.

The conversation didn't went – didn't go that way.

Q. At no time did Mr. D'Angelo ever say to you he was an Officer of Adams Iron Works, Incorporated, did he, a president, vice president, secretary or treasurer? A. I don't remember, no.

Q. At no time he showed you any paper that he was authorized to act or sign any documents for Adams Iron Works, did he? A. No, he didn't.

Q. He was negotiating and trying to help work out a contract; isn't that correct? A. Yes.

Q. Didn't you hear Mr. Colavito say on his direct testimony he would take it up with Joe Bonanno afrerwards?

MR. BLYER: Objection, your Honor, to what he heard or not.

It is immaterial.

JUDGE MULLIN: He may testify if he recalls.

Q. If you recall. A. Can you repeat the question?

112 Q. Didn't you hear Mr. Colavito say he would take it up with Joe?

I am referring to —withdrawn.

Did you hear Jack D'Angelo say and Mr. Colavito stated it on the witness stand here and you were in Court, weren't you? A. Yes.

Q. I'm quoting him "Jack D'Angelo," he, meaning Jack D'Angelo, "would take it up with Joe"? A. I heard Mr. Colavito saying here but I don't remember saying it over there.

Q. On May 28th, 1974 you were present at the coffee shop and what hotel was that, please, or what place, if you remember? A. I believe it was the Holiday Inn in the LaGuardia Airport.

Q. Was Joe Bonanno there? A. What is the date?

Q. May 28th you said. A. No, no, he wasn't there.

Q. That is when you met with Schifano, Colavito, D'Angelo and Schonfeld; is that correct? A. And another.

Q. And George? A. Yes.

113 Q. I ask you whether this contract is dated May 28th or some other date? A. Yes.

Q. Tell us the date it is dated? A. May 29th, 1974.

Q. I ask you to look on the back here and see what date is on this contract here? A. It looks like 24th or 28th.

Q. Is the writing that appears on the top of this agreement the same as you see below this on the first page? A. You mean this and this (indicating)?

Q. Yes. A. I wouldn't know that. I don't know.

Q. Did you ever discuss on May 28th with Jack D'Angelo, and your recollection is pretty good what took place, about arbitration?

Do you remember any conversation that Mr. Colavito said that –

A. Wait a minute, you mean discuss it?

Q. Discussing it or hearing it on May 28th, anything about arbitration?

A. No, I don't remember.

Q. Do you remember Mr. Colavito saying anything to Jack D'Angelo that this is only for arbitration? A. No, I don't remember anything like that.

114 Q. You are sure? A. Yes.

Q. On June 3rd you said you went over to Joe Bonanno's store where he had his little iron works and by the way, how big is the iron works itself there?

It is a 20 foot store, isn't it? A. It is a fairly good size iron shop.

Q. How wide is the iron shop on the street side, just the shop now?

A. I would say the whole thing is about 50 feet wide.

Q. I'm talking about the building, sir, I'm not talking about a lot alongside of it. A. Only the structure, not the yard?

Q. Yes. A. I really – maybe it is half of it. Could be 25 feet.

Q. 25 feet? A. Yes, it is about.

Q. This is not a Carnegie Iron Works? A. I don't know any Carnegie Iron Works.

Q. I guess you don't.

When you went there on June the 3rd, 1974 were there any pickets there?

A. June the 3rd, 1974?

Q. Yes. A. No, there was no picket.

115 Q. When you spoke to Joe Bonanno did you mention to him that there was a signed contract involving him on that day?

Did you tell him that there was such a contract signed? A. I don't think I mentioned.

I think he referred –

Q. One moment, did you tell him that? A. No, I don't think so, no. Not in the way you are putting it anyway.

Q. Didn't he tell you that they had no work for Mr. Mazzanti in the field that he was skilled? A. No.

Q. Did not tell you that? A. No.

Q. Do you know how many people are working at Adams Iron Works in the last day?

* * * * *

Q. How many men would you say were on the books of your Union as employees of Adams Iron Works prior to July 1, 1973?

116 MR. BLYER: Objection, your Honor, to the relevance.

JUDGE MULLIN: Objection sustained.

MR. FERLAINO: If your Honor please, I think this is very relevant.

First of all, I am going to ask the members of the Union to produce the records so we can be guided.

It is our contention that we had three employees here in the Union and their records will show that.

They came with the contract insisting that every man be a member of this Union.

Greatly to the prejudice of my client.

JUDGE MULLIN: Mr. Blyer, is there any representation issue in this case?

MR. BLYER: In what sense, your Honor?

I'm not sure I understand you.

JUDGE MULLIN: You are alleging 8(a)(5) violation.

MR. BLYER: Yes.

JUDGE MULLIN: Based upon what?

MR. BLYER: Failure to honor and implement a contract that they were bound by.

JUDGE MULLIN: And you are adhering to that position solely?

MR. BLYER: With regard to the 8(5)?

JUDGE MULLIN: Yes.

MR. BLYER: No, 8(5) also relates to the failure to the failure to recall,
117 re-employ John Mazzani, failure to recall the ULP strikers.

MR. FERLAINO: They were not Union members, your Honor.

MR. BLYER: They were not, they were strikers.

JUDGE MULLIN: We can't relitigate what has already been decided by the Labor Board in the other case.

MR. FERLAINO: But if the documentary evidence proves, their own documentary evidence and I am asking you to direct them to bring the records that will show that only three members were members, that they can't voice a dozen additional people on us.

JUDGE MULLIN: The earlier cases as I have noted and I haven't had an opportunity to read it, but this earlier case held that the Company had not bargained in good faith with the Local.

MR. FERLAINO: Which at that time had three members.

JUDGE MULLIN: Whatever the situation was at that time, as far as this case is concerned it was settled as the composition of the unit and the majority status at the time that the demand was made and the case was presented in the earlier situation in this 29-CA-3596, so it is not possible now to reopen all of that and relitigate what was litigated in the original case.

That is one of the reasons why the decision in the earlier case of course
118 is relevant to the present proceeding.

MR. FERLAINO: I respectfully except.

I think substantial justice would indicate I would be permitted to show

that their records show three men being members of the Union and I think the Court ought to take judicial notice of that.

JUDGE MULLIN: I don't see how that would be possible in the posture of the present situation, in the present case as presented here with this earlier background and a binding decision of the Board outstanding.

MR. FERLAINO: Exception to your Honor's ruling.

JUDGE MULLIN: Sure.

MR. BLYER: Your Honor, you asked me a question and I didn't complete the answer.

Based on our pleadings we are alleging 8(5) with regard to two things I mentioned here and in addition to the fact that on June 3rd and on June 26th as stated in Paragraph 15 of the complaint Respondent conditioned honoring and abiding by the contract and Union agreeing to represent for the purposes of collective bargaining only half of the Respondent unit employees.

That is a third separate element in the 8(a)(5) case.

JUDGE MULLIN: Do you have any further questions of Mr. Schifano?

119 MR. FERLAINO: Yes, one or two more I think and everybody will want to suspend.

We can continue with this witness when we come back, Judge.

JUDGE MULLIN: If you have just a few more questions I suggest --

MR. FERLAINO: Well, this is going to take me off the track.

Let me see if I can continue with him.

Q. (By Mr. Ferlaino) On June 26th -- maybe a few more, a few questions but I will try to be brief.

June 26, 1974 you met at the iron works with Joe, myself and Mr. Colavito; is that right? A. Yes.

Q. At that time do you recall my asking you to make substantial changes in the contract as to wage rates and saying to you that we couldn't sustain a

40 per cent charge on this business for welfare funds, milk benefits and what not, pay holidays beyond the rest of the industry, all sorts of benefits running down the full gamut of benefits; do you recall my saying that we couldn't sustain that? A. I don't recall saying exactly what you just said but, you know, in line with that I recall that you started to discuss issues in the contract, discuss the cost of the whole thing.

120 Q. Don't you recall saying that we had estimated the cost would be 40 per cent? A. No, I don't recall that.

Q. Do you recall my saying anything along those lines? A. I think you mentioned the cost of the fringe benefits but I don't remember any particular figure.

Q. You don't remember a figure? A. No.

Q. Did we ask you to make some modification on that and the wages? Didn't we tell you as for example that if we were to do a job for $1,000 that these non-Union shops could do the same job and there are hundreds of them in the Brooklyn yellow pages for $700? A. No, you didn't give that example, I don't remember that.

Q. You don't remember Joe saying that to you? A. No.

Q. You don't remember Joe showing you this whole list and there are hundreds of them in here, this is just the ads, here all these names in here; don't you remember Joe showing – A. No, he didn't show me this.

He showed me something to this fashion that had Italian Art Iron Works

121 and another shop that I don't recall right now.

Q. These shops are not Unionized, are they?

MR. BLYER: Objection.

A. I wouldn't know.

Q. Didn't we tell you that though, wasn't that the conversation?

A. I believe there was discussion, Joe, not you, Joe was talking about these two shops taking work away from him, and –

Q. That is correct. A. And he showed me something with that name. That is what I remember about that.

Q. Didn't he show you also the names of customers of his where the same employees have referred calls? A. No, he didn't show me that.

Q. Didn't he show you a Consumer Protection Agency of the City of New York where these people had done work, where these same men had referred to work to other people? A. I don't recall, I don't recall anything like that.

Q. You don't recall that? A. No.

Q. Do you recall my asking Mr. Colavito that, saying to Mr. Colavito in order for this man to survive and stay in business, otherwise he faces liquidation and I told him that we are down to about two or three employees from
122 maybe six or eight, that we have to have a contract that has to be acceptable to us and acceptable to them but that we can live with; don't you remember we have to have a contract that we can live with? A. Yes, I remember something on the general way like this, that you have a contract.

Q. Don't you remember Mr. Colavito saying to me "We are not going to make any changes unless they are minor changes"? A. You don't let me finish my answer or are you going to keep talking?

You asked me 35 things. You asked me the whole meeting.

MR. FERLAINO: Ask him the question again, please, Mr. Reporter.

THE WITNESS: Certain things you asked me were correct, certain thing I don't remember, you know, I got to finish.

Q. (By Mr. Ferlaino) Do you remember us telling you that we are not able to exist with the benefits at 35 per cent and face the competition of non-Union shops? A. No, I don't remember any figure and I don't remember –

Q. You are a former iron worker; is that correct? A. Yes, I am an iron worker.

123 I'm just leave of absence at the moment.

Q. You are familiar with non-Union shops, aren't you? A. No, I would say no, I'm not familiar.

Q. You are not familiar? A. No.

* * * * *

Q. (By Mr. Ferlaino) Did Joe Bonanno say to you that Union shops can do jobs for 30 to 40 per cent less than us if we have to concede to you on the terms you want?

MR. BLYER: You mean non-Union shops?

Q. (Continuing) Non-Union shops, yes. A. I don't believe the way you put it, the figure.

124 Q. How did he put it? A. Joe said to me, he showed me this paper, one piece of paper.

He said these people were killing him with taking his work away from him and that is all.

He didn't use any figure.

He didn't use as far as I remember.

* * * * *

126 AFTERNOON SESSION

(2:45 o'clock P.M.)

JUDGE MULLIN: The trial will be in order.

During the course of the recess, extended somewhat, Counsel have been working out the details of a stipulation, and Counsel for the General Counsel has spent an extended period examining the records of Respondent with respect to the commerce data.

I understand that you are prepared to enter into a stipulation of some sort?

MR. BLYER: Yes, your Honor, that during the calendar years of 1971, 1972 and 1973 Respondent, Adams Iron Works, Incorporated, purchased iron

and related products valued in excess of $50,000 from wholesale distributors located in New York State which firms, in turn, purchased such iron and related materials valued in excess of $50,000 directly from firms located in foreign countries such as Germany, Belgium, France, Italy and Japan, and during during that same period of time, the calendar years of '71, '72 and '73, the Respondent Company's gross sales on an average was approximately $200,000 a year for each of those calendar years.

Secondly, that for the first 10 months of the year '74 the Respondent purchased iron and related products valued in excess of $27,000 from –

127 MR. FERLAINO: Not in excess.

MR. BLYER: I'm sorry, purchased products valued at approximately $27,000.

MR. FERLAINO: Or less.

You came out with substantially less.

MR. BLYER: I didn't check for every nickel and dime.

MR. FERLAINO: Certainly a lot different.

MR. BLYER: Roughly $27,000.

MR. FERLAINO: As represented by the Respondent.

Go ahead.

MR. BLYER: From wholesale distributors located in New York State which firms in turn purchased such iron and related products valued in excess of $50,000 directly from firms located in foreign countries.

MR. FERLAINO: I don't follow.

MR. BLYER: Such as Germany, Belgium, France, Italy and Japan.

MR. FERLAINO: Read the last two sentences if you don't mind, starting with $27,000, sir.

(Whereupon, the pertinent portion of the record was read by the Reporter.)

MR. FERLAINO: In the first 10 months of 1973.

MR. BLYER: '74.

MR. FERLAINO: '74 the Respondent purchased steel, iron and related
128 products as per the computation made by the Attorney for the NLRB of $27,000 or less.

MR. BLYER: Well, don't say or less.

You have to make it more definitive.

$27,000.

MR. FERLAINO: Of $27,000.

MR. BLYER: You have to say where they made purchases from.

MR. FERLAINO: Purchases were made – you have examined the records and the purchases were made from wholesale distributors in the New York State area.

MR. BLYER: Which firms, in turn, purchased during the same period of time iron and related products valued in excess of $350,000.

MR. FERLAINO: No, no.

MR. BLYER: Directly from the firms located in foreign countries such as Germany, Belgium, France and Italy and Japan.

MR. FERLAINO: This I can't stipulate.

MR. BLYER: You represent that they did that in '71, '72 and '73?

MR. FERLAINO: I represent in 1971, '72 and '73 we purchased – by "we" Adams more than $50,000 in purchases.

MR. BLYER: This is the problem that we raised before, before we went
129 for lunch.

JUDGE MULLIN: I think you agreed on the first.

I think the figures should be broken down into two parts, the first part dealing with the period from 1971 to 1972.

Apparently you are in agreement as to that.

MR. FERLAINO: That's right.

JUDGE MULLIN: That the Respondent purchased in excess of $50,000 worth of steel from New York wholesalers in the Metropolitan New York area who in turn had derived all of their steel from France, Belgium, Germany and Japan those years and who, in turn, had purchased in excess of $50,000 worth of steel from those countries?

MR. FERLAINO: They in turn purchased more than $50,000.

JUDGE MULLIN: Yes.

MR. FERLAINO: Off the record, please.

JUDGE MULLIN: Off the record

(Discussion off the record.)

JUDGE MULLIN: On the record.

MR. FERLAINO: He says yes, iron companies that buy steel from Europe do buy, they are substantial.

They buy more than $50,000.

JUDGE MULLIN: So that that is –

MR. FERLAINO: That is correct.

130 JUDGE MULLIN: (Continuing) – agreeable?

MR. FERLAINO: Yes.

JUDGE MULLIN: So then as far as the first portion of the stipulation is concerned you are in accord, gentlemen, as I understand it?

MR. BLYER: Yes, your Honor, I think we are.

JUDGE MULLIN: And that during that same period gross sales of the Respondent were –

MR. BLYER: In excess of $200,000.

MR. FERLAINO: But not exceeding let us say $280,000.

JUDGE MULLIN: From $200,000 to $280,000 a year in this three-year period?

MR. FERLAINO: That is right, and that in the year 1974 for the first 10 months the purchase of aforestated was $27,000.

We will stipulate that from the purchases made with these companies they in turn purchased in excess of $50,000.

JUDGE MULLIN: From those same countries mentioned earlier?

MR. FERLAINO: Yes, correct.

JUDGE MULLIN: Germany, Japan, Belgium and the like?

MR. FERLAINO: Yes, based upon the experience of the president who
131 is here and the sales we are effecting at the present time, total purchases of Adams Iron Works, Incorporated for the calendar year 1974 will not exceed $32,000 or $33,000.

JUDGE MULLIN: And during this same calendar year '74 sales will be approximately —

MR. FERLAINO: Sales were $74,000 to October 21st and will probably be in the vicinity of $90,000, not greater than $90,000 for the entire year.

JUDGE MULLIN: Is that stipulation agreeable in all its parts. Mr. Blyer?

MR. BLYER: Yes, your Honor.

MR. FERLAINO: It is agreeable with the Respondents.

JUDGE MULLIN: Very well then.

Thank you, gentlemen. I think this is very helpful in cutting out a lot of trial making it unnecessary to engage in extended examination on the witness stand.

* * * * *

MR. BLYER: I would like to call Mr. Bonanno to the stand, please.

132 Whereupon,

JOSEPH BONANNO

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn by Judge Mullin, was examined and testified as follows:

MR. FERLAINO: If your Honor please I will make my statement later.

MR. BLYER: Can we get this marked as General Counsel's Exhibit No. 8 for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 8 for identification.)

DIRECT EXAMINATION

Q. (By Mr. Blyer) Mr. Bonanno, I hand you what has been marked for identification as General Counsel's Exhibit No. 8.

Can you tell me what that is?

A. It is a payroll book.

Q. Does that cover all your employees that you employed? A. Beside the secretary and myself, all the mens there.

Q. I notice on the front of the book it says non-Union employees.

Did you have a separate book for Union employees?

A. Yes, I did.

Q. So this does not include all the people, there is another book?

133 A. That is the men who work for me now, you know.

Q. Let me direct your attention to the payroll period for the week ending June 28, 1973.

You are looking at that?

A. Yes.

Q. I notice here eight names; is that correct? A. Yes.

Q. Did you have any other men working for you at the time? A. No.

Q. What about a man named Nick Sorrentino; I see his name isn't there.

Wasn't he working for you at the time? A. No.

Q. He had been fired? A. Before.

Q. Before the strike? A. It was about 23rd, 24th, I don't remember exactly.

Q. You think it was before the strike? A. Yes.

Q. Does his name ever appear?

MR. FERLAINO: Look in the week before.

A. No, in this page.

Q. The week ending 6/21 is his name there? A. I don't see it.

134 Q. How about in the first couple of weeks of June, is his name there?

A. No, I think it is a different book.

Q. So you must have another book?

Could we have that?

A. Yes. Not this, on the bottom, I think.

MR. FERLAINO: Here is another book.

MR. BLYER: May we go off the record, your Honor?

JUDGE MULLIN: Yes.

(Discussion off the record.)

JUDGE MULLIN: On the record.

MR. BLYER: Your Honor, at least we can stipulate I think that the payroll record for Respondent shows that for the week ending June 28th –

* * * * *

135 MR. BLYER: Your Honor, I offer into evidence the pages in General Counsel's Exhibits 8 and 9 that reflect the payroll period for the week ending June 28, 1973.

JUDGE MULLIN: June 28th?

MR. BLYER: 1973, both books.

I will also offer the pages in both books that reflect the payroll periods for the week ending July 5th, 1973 and July 12th, 1973 and July 19th, 1973.

I will note that with regard to General Counsel's Exhibit No. 9, the

136 payroll records cease for the week ending July 5, 1973.

That is, there is no payroll for that or the employees that were formerly listed in General Counsel's Exhibit No. 8 after July 5th of 1973.

It should also be noted that the book for July 5th, the book that has been identified as General Counsel's Exhibit No. 9 is for Union employees at the time and I offer those various pages into evidence.

* * * * *

JUDGE MULLIN: The offer of those payroll pages from those two respective exhibits, General Counsel's Exhibit 8 and General Counsel's Exhibit 9 for identification, that offer is received, there being no objection and the respective payroll pages that are now being received such as described by Counsel for the General Counsel will be photocopied and the payroll records themselves will be returned to Respondent.

137

You can take care of that, Mr. Blyer.

MR. BLYER: Yes, your Honor, I will.

(The documents above-referred to heretofore marked General Counsel's Exhibits Nos. 8 and 9, were received in evidence.)

MR. BLYER: Just so we have the testimony of the witness, your Honor, with regard to General Counsel's Exhibit No. 9 for identification:

Q. (By Mr. Blyer) Is it correct, Mr. Bonanno, that after July 5th of '73 in this book that is entitled Union's payroll book, that there no longer appears any other names? A. Everybody was on strike.

Besides I think I fire, there was none in the book.

John Cirillo we fire later when we strike for dishonesty.

Q. I understand that there were some discharges, Mazzanti and Mr. Sorrentino and a Mr. Cirillo? A. After, in July among the 10th or 12th.

Q. Is that John Cirilio or Antonio? A. John Cirillo.

Q. You also had in your employment, didn't you, on June 28, 1973 an Antonio Cirillo; isn't that correct? A. Yes.

138 Q. Both of the names are spelled, the last name C-i-r-i-l-l-o? A. It is different.

Q. It is a different person? A. Cirinno, that is with a U and that is with an I, Cirillo and Cirinno.

Q. You recall, Mr. Bonanno, receiving from the Union a request to reinstate certain of the men who went out on strike in July of 1973?

Do you remember such a request?

MR. FERLAINO: Give us the date of that notice, please.

Q. (By Mr. Blyer) Let me show you what has been marked for identification as General Counsel's Exhibit No. 5.

Do you recall receiving that letter? A. 1974.

Q. Yes? A. Yes.

MR. FERLAINO: What is the date of that letter, Counselor?

MR. BLYER: June 13th of '74.

Q. (By Mr. Blyer) Now, in that letter seven employees are named and the Union requested that they be put back to work.

139 Now, Mr. Antonio Cirillo, it is spelled wrong in the letter.

A. No, it is correct.

Q. C-i-v-e-l-l-o? A. Cirillo, C-i-r-i-l-l-o.

Q. He was working for you before the strike, right, Mr. Antonio –

A. No, no, that is wrong.

That is Cirullo.

Q. I don't know if we are going to understand it this way.

Wait, Mr. Bonanno, wait a second.

You had a man with a first name Antonio working for you? A. Correct.

Q. How do you spell his last name? A. Antonio Cirillo, C-i-r-i-l-l-o.

Q. In the letter of June 13th, 1974 his name is here, isn't it? A. Yes.

Q. But the last name is misspelled? A. Yes.

Q. It is spelled C-i-v-e-l-l-o, right? A. Yes.

Q. He worked for you right before the strike? A. Yes.

140 Q. And then went out on strike? A. About, I'd say about 10 days later.

Q. He went out on strike, okay, and Mr. Gaspare Santamaria? A. Also.

Q. He went out on strike? A. Also.

Q. He had worked for you right before the strike? A. Yes.

Q. Mr. T. Gibaldi, he worked for you right before the strike. A. Yes.

Q. Then he went out on strike? A. Yes.

Q. And Mr. Vito Chimenti? A. Yes.

Q. He worked for you before the strike? A. Yes.

Q. And then went out after? A. Yes.

MR. FERLAINO: Do you understand these questions?

When he says he went out, were these men discharged or –

THE WITNESS: Well, the men was – I terminate by the Union, that is

141 why don't show up in the non –

JUDGE MULLIN: Off the record.

(Discussion off the record.)

JUDGE MULLIN: On the record.

Mr. Bonanno, I want you to be sure that you understand the questions. If you don't understand the question say that you don't understand it and you speak slowly so that the Reporter can get your answer.

MR. BLYER: I will go through it again for your benefit, if your Honor has no objection.

Q. (By Mr. Blyer) Mr. Antonio Cirillo, Mr. Gaspare Santamaria? A. Yes.

Q. Mr. T. Gibaldi and Mr. Vito Chimenti, before the strike began on July 2nd, 1973 they worked for you; is that correct? A. They were worked after.

Q. Some of them worked even after? A. Yes.

Q. But soon after the strike began, a few days later all of them stopped coming to work; isn't that true? A. Yes.

Q. And they went out on strike? A. It was forced to.

142 Q. They were forced to? A. Yes.

Q. Whatever, but they went out on strike, right? They stopped coming to work? A. Yes.

Q. That was just within a few days after the strike began? A. Yes.

Q. For the week ending June 14th, 1974 will you please look at this book which is marked General Counsel's Exhibit No. 8 for identification.

You had three employees; is that correct? A. When is the date?

Q. June 14, 1974. A. Yes.

Q. Savona, Mr. LaMarca and a Philip Savona and you have Dominick Savona and Philip Savona and Mr. LaMarca? A. Yes.

Q. What did Mr. Savona do? A. He help me.

Q. He worked in the shop? A. With me.

Q. Was that Dominick? A. Dominick.

Q. What about Mr. Philip Savona? A. He help in the truck out-

143 side.

Q. He did installation work? A. Yes, LaMarca.

Q. Just a moment, Mr. Phil Savona did installation work? A. He helped in the truck.

Q. He worked for you in the shop too? A. No, no.

Q. Just on the truck? A. On the truck.

Q. And Mr. Dominick Savona just worked in the shop? A. With me, yes.

Q. What about Mr. LaMarca? A. The truck driver.

Q. He drove the truck? A. Yes.

Q. Did he do installation work? A. Whatever he did, repair, installation.

Q. He did repair and installation? A. Yes.

Q. Did he work in the shop too? A. No.

Q. So you had one man, Mr. Dominick Savona who worked mostly in the shop? A. Yes.

144 Q. And Mr. LaMarca and Mr. Philip Savona, they worked mostly installing and doing repair work and whatever else you had to do? A. Yes.

Q. I notice here that for the week ending July 5th, excuse me, for the week ending June 28th, 1974 you hired a new man, Mr. Perulli.

He took the place of – A. LaMarca.

Q. Mr. LaMarca? A. Yes.

Q. Did he do the same work as Mr. LaMarca? A. Yes.

Q. For the week ending August 2nd, 1974 you had a fourth man named Antonio Cirillo? A. Yes.

JUDGE MULLIN: You said this is August 2nd, 1974?

MR. BLYER: Yes, your Honor.

MR. FERLAINO: Was this a second man?

MR. BLYER: This is a fourth man, correct, Mr. Antonio Cirillo, a fourth employee.

THE WITNESS: Yes.

Q. (BY MR. BLYER) In addition to the two Savonas and Mr. Perulli you had a Mr. Antonio Cirillo? A. Correct.

145 Q. Is this the Mr. Cirillo who worked for you before? A. Yes.

Q. The same man? A. Yes.

Q. This is the man who was discharged for dishonesty at one time?

A. No, no, that was different, that was –

Q. That was John? A. John.

MR. FERLAINO: Let him finish his answer, please.

I didn't hear it.

A. (Continuing) That is Antonio Cirillo, that one was Cirillo.

Q. Antonio Cirillo who you rehired here on August 2nd of 1974?

A. Yes.

Q. He was one of the employees who worked for you before the strike?

A. Yes.

Q. And who then went out on strike? A. Yes.

Q. You put him back to work? A. He come to the job again.

Q. You put him back to work again? A. Yes.

146 Q. Now, I notice for the week ending September 20th, 1974 Mr. Philip Savona is no longer working for you? A. He still work, you know.

Q. Well, he is no longer on your payroll? A. Well, this particular week, maybe, the following week.

Q. He came back later? A. Yes, you know.

He miss a week, two.

Q. But you add Mr. Santamaria for the week ending September 20th?

A. Yes.

Q. Is that right? A. Yes.

Q. This is the same Mr. Santamaria who worked for you before the strike? A. Correct.

Q. For the week ending November 8, 1974 you add another man, a Mr. Fornarelli? A. F-o-r-n-a-r-e-l-l-i.

Q. What did Mr. Fornarelli do? A. He help in the shop.

Q. He worked in the shop? A. Yes.

MR. BLYER: Your Honor, I would like to offer at this time payroll

147 records for the Respondent for the week ending June 14th of '74 through the week ending December 5th of 1974, with the understanding that I will Xerox those pages and return the payroll book to the Company.

* * * * *

148 MR. BLYER: Your Honor, I would like to also offer as part of my Exhibits 8 and 9 the payroll records for the week ending May 31st, 1974 and June 7, '74.

I think the prior offer in evidence covered from June 14th, '74 to December 5th of '74 and this now is two weeks prior to June 14th of '74.

* * * * *

149 MR. BLYER: Your Honor, I just have a very few more questions.

Mr. Bonanno, would you be good enough to take the stand again.

Q. (BY MR. BLYER) Mr. Bonanno, prior to the strike in 1973, just say briefly, what did your Company do? A. Railing.

Q. You say railing? A. Yes.

Q. It manufactured railings? A. Yes.

Q. It cut them? A. Yes.

Q. It had to do with what you call lay them out? A. Weld, yes.

Q. You had to do welding? A. Yes.

Q. What else do you do before you install the raling? What else did your men have to do to the product? A. We got to cut, cut steel, twist and weld and cut the measurement, you know, all the process they need to manufacture the railing, yes.

Q. After you make the railing it was your people who installed the
150 railing? A. Yes.

Q. These are the people that we talked about before when I went through your payroll? A. Yes.

Q. The Savonas and Mr. Mazzanti and the two Cirillos? A. Yes.

Q. All those people and the other ones I mentioned, they did this type of work; isn't that right? A. Cirillo installed, Cirillo, John, installation and the rest work in the shop.

Welder, you know, lay out the work.

Q. But all of the people we mentioned, they either worked in the shop or they did installation; isn't that correct?

You understand me? A. Would you repeat?

Which people you mean?

Q. We mentioned Dominick and Phil Savona? A. Yes.

Q. And Cirillo, right, John Cirillo? A. Antonio.

Q. Back to the same problem.

You had an Antonio? A. Cirillo.

151 Q. And you had a John? A. Cirullo.

Q. Both of them or one worked inside doing work in the shop and one worked on the installation? A. Cirillo sometime go out too, depend on what you need.

He was a help.

Q. They helped one another? A. They go both way, out and inside and whatever you need, you know, he help you.

It is a general help.

Q. Where did Mr. Mazzanti work? A. On a bench.

Q. In the shop? A. Yes.

Q. And his job was what? A. Lay out the job.

Q. And Mr. John Cirillo? A. He installed.

Q. Did installation work? A. Yes.

Q. Mr. Nick Sorrentino? A. Welder.

Q. How about Mr. Gibaldi? A. He was general help.

152 Q. In the shop? A. Yes, outside, in the shop, whatever we need.

Q. And Mr. Chimenti? A. Chimenti was inside the shop.

Q. And Mr. Santamaria? A. In the shop, painting, do general, you know, general help.

Q. In the shop? A. Yes.

Q. And Antonio Cirillo? A. Same thing, in and out, general help. Chimenti worked at paint, general.

Q. How about Dominick Savona, what did he do? A. He help me.

Q. What do you mean? A. Weld, lay out the work.

He weld. He grind, you know.

Q. And Philip Savona? A. Just a helper, cut the bar. He go with the truck, help, you know, install.

Q. And Mr. Perulli? A. Truck driver and installed.

Q. Mr. Fornarelli? A. Inside the shop.

Q. Worked inside the shop? A. Inside the shop.

153 Q. Worked inside the shop? A. General help, yes.

Q. At the present time isn't it true that you were doing the same type of business, manufacturing railings and iron work? A. Yes, more or less.

Q. The same business? A. No. What do you mean the same business? The same line.

Q. I don't mean the same amount of business but the same line? A. Yes.

Q. And that you have always done, the same line of business? A. Before we done much more different things, more beam work, more heavy work.

This is more customer work.

Q. But it is still making railings? A. It is a railing job, sure, it is a railing shop.

MR. BLYER: Your Honor, I have no further questions of this witness.

JUDGE MULLIN: Do you have any questions?

MR. FERLAINO: Yes, I do, Judge.

Have you rested, Counsel?

154 MR. BLYER: You can cross-examine now, if you'd like.

MR. FERLAINO: May the record show the witness was called by the N.L.R.B.;

JUDGE MULLIN: Yes.

MR. FERLAINO: And they have made him, the president of the Respondent corporation, their witness.

JUDGE MULLIN: Yes, and you may examine him as to all subject matter that was discussed on the direct.

MR. FERLAINO: That is correct.

I'm limited to this, I'm aware of it, Judge.

CROSS-EXAMINATION

Q. (BY MR. FERLAINO) Mr. Blyer asked you about the various employees that were working for you up to June 28, just before the strike?

A. Yes.

Q. I want you to tell the Court which of these employees were fired about this time and the circumstances surrounding their discharge, Mr. Mazzanti and Mr. Sorrentino.

MR. BLYER: Your Honor, I would object to that testimony as nothing relevant to this proceeding.

We concede and I am not claiming that either Mr. Giavanna Cirillo whose name appears in the letter of June 13, '74 and Mr. Nick Sorrentino whose name appears in the letter of June 13th, '74, we are not claiming that

155 either of these two individuals were unfair labor practice strikers.

JUDGE MULLIN: Nick Sorrentino?

MR. BLYER: The name appears here, your Honor, or Giavanna Cirillo

and with regard to those two individuals, although the application for re-employment applies to them, General Counsel is taking the position that they were not entitled to reinstatement, that although they too engaged in the strike, we are willing to concede they were discharged for cause.

Now, with regard to Mr. Mazzanti we too are willing to concede that he too had not fallen into the category of an unfair labor practice striker.

However, it is our position that he is entitled to reinstatement based upon the fact that as part of the contract that was agreed to in the sense a side agreement, it was understood as part of the package for settling this case in terms of the contract that Mr. Mazzanti would be reinstated.

JUDGE MULLIN: But you are not disagreeing with the position of Counsel for the Respondent that Mazzanti was fired some time in June of 1973?

MR. BLYER: Right.

It is not exactly clear when he was fired, either right before the strike
156 or after the strike, but we are not claiming he is an unfair labor practice striker entitled to the rights of an unfair —

MR. FERLAINO: We object with whatever position he takes with Mazzanti.

We say he is not entitled to anything in this connection.

Q. (BY MR. FERLAINO) Now, tell us what happened with Mr. Mazzanti and Mr. Sorrentino and the circumstances surrounding the discharge of Mr. Sorrentino?

MR. BLYER: Your Honor, in view of what I just said I don't think it is at all relevant to the proceeding just why these men were let go.

MR. FERLAINO: I think the Court ought to know.

I think the record ought to reflect what these people were doing to my client.

I think the circumstances surrounding the discharge is important.

THE WITNESS: Should I answer?

JUDGE MULLIN: As far as Cirillo and Cirinno is concerned General Counsel has conceded they are not unfair labor practice strikers.

I will have to sustain the objection to that.

Now, what is this with respect to?

MR. FERLAINO: With respect to Mazzanti.

157 Q. Tell us what happened?

JUDGE MULLIN: I will permit you to examine I suppose that there will only be a few questions on this.

MR. FERLAINO: That is all.

Q. (BY MR. FERLAINO) Tell us what happened?

MR. BLYER: Make it clear you are talking only about Mazzanti.

Q. (BY MR. FERLAINO) Tell us what happened with Mazzanti, but this is go ahead. A. Because I fire Sorrentino for dishonesty, to give the address of the job come to my office and he really read it in the paper and gave it to somebody else at the shop.

JUDGE MULLIN: Well now, this is Sorrentino?

Q. What did Mazzanti do then? A. When I fired Sorrentino I was a little angry for I sent a letter to the Union the reason why it was in my own time an the work time he was talking in front of the door about three quarters of an hour before my competitor, the one he gave the address for the job and I fired Sorrentino right away.

I was angry and this Mazzanti jumped on me.

Q. What did he do?

JUDGE MULLIN: Very slowly.

A. Mazzanti jumped on me with foul language, like dirty language.

158 Q. Tell us what he called you? A. And he dropped everything, he

got in his hands, impossible to work here, it was take Sorrentino's defense and also when I saw this I sent him out too.

Q. Did you write the Union and tell them about that? A. Everything.

Q. I show you this letter dated July 9, 1973 and ask you if this is the letter that you sent to the Union? A. Correct.

MR. FERLAINO: I will offer it in evidence.

JUDGE MULLIN: Respondent's Exhibit No. 1.

MR. FERLAINO: 1 or A?

JUDGE MULLIN: Respondent No. 1.

(The document above-referred to was marked Respondent's Exhibit No. 1 for identification.)

MR. BLYER: I don't think it is at all relevant, the reasons why Mr. Mazzanti was let go.

However, I have no objection to Respondent's Exhibit No. 1.

JUDGE MULLIN: Respondent's Exhibit 1 is received.

(The document above-referred to heretofore marked Respondent's Exhibit No. 1, was received in evidence.)

Q. (By Mr. Ferlaino) The lawyer who put you on the stand, Mr. 159 Blyer, asked you about the letter of June 13, 1974 which he claims he asked you about returning these men to work; is that correct? A. Yes.

Q. Who was doing the set up work in this factory? A. I do.

Q. Does anybody else do set up work? A. No, all me.

Q. How many hours a day do you work? A. Twelve, 10, 14, 15, whatever it requires.

Q. You work Saturday and Sunday? A. Yes.

Q. Do you work for layout man now? A. No.

Q. Did you have any work for a layout man in the last six months? A. Never.

Q. The men that you employed after this year, after this letter are what type men? A. All helpers.

* * * * *

160 Q. How many men are working at your store today? A. One fellow.

Q. And yourself; is that correct? A. Yes.

Q. Is Gaspare Santamaria working today? A. No.

Q. Not for you, is he working for anybody else? A. I don't know.

Q. Did you tell me he was working for some Fern, Peter & Company? A. Before, yes.

Q. Do you know whether any or are any of these men that are on this list working for other people today, that you know of? A. No.

161 MR. FERLAINO: I will go into the Defendant's part of the case or the Respondent's subsequently but I don't want to bring in any new material at this time.

JUDGE MULLIN: Do you have any other questions?

MR. FERLAINO: No, nothing else at this time.

JUDGE MULLIN: Thank you, Mr. Bonanno.

No further testimony?

MR. BLYER: No, General Counsel rests its case.

JUDGE MULLIN: Is the Respondent ready to proceed?

MR. FERLAINO: Yes. I would like to make a motion at this time directed to the prima facie case.

Respondent respectfully moves that the N.L.R.B. has failed to make out a prima facie case and that with respect to the contract they have sought to

have validated here, that there has been absolutely nothing, not a scintilla of proof as to the agency of the person who signed the contract to act on behalf of the corporation.

As a matter of fact, the testimony is quite to the contrary.

The witness Colavito as has testified that he did not know whether this man was a director, officer or stockholder of the corporation and it will be established by documentary evidence that he was not.

He had no proof whatsoever of the agency of this man and agency in law cannot be produced in the absence where the principal was absent or is
162 there any proof of the scope of the agency whatsoever, except to say that he came to help and certainly it cannot be claimed that an agency is established to execute a contract on behalf of a corporation when there is no proof whatsoever, not a scintilla of evidence to show that this man was authorized to sign on behalf of a corporation.

As a matter of fact, the N.L.R.B. has failed to produce the appropriate witnesses that might have spelled out such an agency, such as the witness or the possible lawyer that they claim was present which there was no proof that this lawyer was representing the Respondent, no proof whatsoever that the officer of the Respondent was present with respect to any of these negotiations and no where in the negotiations was there any proof that this man had absolute authority to sign a contract on behalf of this corporation.

This would be the same as my saying I'm authorized by Bankers Trust Corporation to get a piece of paper and sign a contract on their behalf saying that I was given authority to represent them or to act on their behalf.

This would be a terrible kettle of fish in our society or in our case law to have such a type of agency stand up under such a circumstance, under such a circumstance and I respectfully submit that alone, plus the fact that
163 they don't even establish in the contract the signature of the person as an

officer, the date of the contract is in error and the name of the corporation isn't on this contract.

It is marked Adam.

I can sign this contract. Does that bind this Respondent?

Certainly in law it does not and I respectfully submit that the case law sustains such a position and I feel in that respect their petition should be dismissed or a complaint, whichever you might want to refer to it as such.

I respectfully submit that if there is no contract then the whole cause of action falls by its own weight.

JUDGE MULLIN: Well, having listened to the testimony as it has been adduced here up to this point, I would deny your motion and so doing reiterate well established principles that the General Counsel has the burden of proof at all times throughout the course of the case, that at this time the burden of going forward is on the Respondent but the burden of proof remains on the General Counsel, of course.

So you have lead to renew your motion after you present your case.

MR. FERLAINO: Judge, the cases are myriad that an agency cannot be
164 established to act for a principal in the absence of a principal.

You must produce the parties.

They haven't done this, Judge, they haven't done this.

They have attempted to produce the agency by self-serving declarations of the third party, the Union herein, and I respectfully submit that the motion should be granted at this time.

MR. BLYER: May I be heard briefly?

JUDGE MULLIN: No.

MR. FERLAINO: You rested.

JUDGE MULLIN: I will reaffirm the ruling.

MR. FERLAINO: Thank you so much.

Whereupon,

JOSEPH BONANNO

was called as a witness by and on behalf of the Respondent, having been re-sworn by Judge Mullin, was examined and testified as follows:

JUDGE MULLIN: You were excused earlier so I will have to swear you again.

DIRECT EXAMINATION

Q. (BY MR. FERLAINO) Joe, Mr. Bonanno.

I call him Joe, I know him so long that I call him Joe.

165 Joe, give us a little history of yourself. Where were you born? A. In Italy.

Q. How much scholastic education have you had? A. About four years elementary.

Q. How old are you today? A. Forty.

Q. How long have you been working? A. All my life.

Q. What kind of work have you done in all this life? A. Well, I started in the woods, working the woodcutting shop.

Q. Cutting down trees? A. Yes.

Then I worked on the mill work and make the flour and then I started carpentry and then starting iron work, and then –

Q. This was all in Europe; is that right? A. Yes.

At age of 23 I come here in America and I meet a friend of mine who was working iron work and I work with him together iron work.

Q. Are you married? A. Yes.

Q. And you have children? A. Yes, two.

166 Q. Throughout your life have you practically worked every day of your life? A. Every day and night.

I got, first of all, the first vacation in my life in America 10 years after, 10 years I got one week.

One shop was closed, I go to work in another shop to make, you know – the time the shop was closed.

Q. You work in the factory and do the hardest work yourself? A. Yes.

Q. Show the Judge your hands. A. It is –

Q. You met this friend of yours from Italy who had a little shop; is that right? A. Yes.

Q. That was behind a little house? A. Yes.

Q. I remember it, back on 31st Street? A. Correct.

Q. Had about 25 or 50 square feet of space? A. Correct.

Q. And you worked there doing railing work; is that correct? A. Yes.

167 Q. Your partner has since left your business; is that right? A. 1967.

* * * * *

Q. (By Mr. Ferlaino) When you were still officers of this Adams Iron Works with your friend and his name was Papalayo, wasn't it?

He was president then, wasn't he?

A. Yes.

Q. You were some other officer? A. Yes.

Q. But you both worked at the forge bending the iron, twisting the iron, right? A. Yes, everything.

Q. You did this all day? A. Yes.

Q. Together? A. Yes.

Q. Did there come a time in 1964 without your knowledge Mr. Papalayo signed a contract with this Union? A. Yes.

168 Do you want me to tell what happened, how?

MR. BLYER: Your Honor, I would object to any testimony about how a contract was entered into in 1964.

I don't know the facts surrounding it but it would be totally immaterial whatever the facts were.

MR. FERLAINO: I want the Judge to hear the mitigating circumstances.

I don't think this is prejudicial to your case.

Go ahead, Joe.

A. This agent, the Union agent, he come to the shop a few time and meet my partner and tell him yes, you got to join the Union because Union give you a job, bigger job, Government work, you know and keep telling the story.

The name was I think Condellora.

My partner was very young fellow, about 24 years old, 25, and was a dreamer to become a big businessman.

And joined the Union and the first job was the United States Division we got to do just, you know, put together the steel, no material involved, just the labor or got a couple of men and they did.

Now, was so, I think he lost time, about $10,000.

I worked like a dog day and night in the shop, took over the loss.

Then he got another job for the City of New York.

169 The job was estimated for the engineer $55,000, and this guy, my partner, Papalayo, he take a job about 25,000.

The civil engineer was fired for incompetence.

This why this guy could do for this job, he tied, we lost the shirt.

After then 1967 I think he done enough, he lost his dream.

He started looking in the building situation, he started building.

He go some place to build and left me the shop.

Q. How fast – A. Yes, me the shop.

Me no English and all I know my life is iron work and I was stuck with the shop.

Like I got no choice.

I want to give it away but nobody want it, no choice to take the shop.

This time I was – I started with the Union, I was with the Union, and the work, trying to work day and night too, to keep up, you know, to stand up.

Now, the end of this contract the Union come, I was got seven eight no Union and three men mechanic Union. The rest was all help.

Now, 1973, in July 1st, the Union come and everybody in the Union or
170 nobody work and then they start situation all of this iron work no Union, you know. That is what the story is and I can't survive.

I want to give up shop years ago. Even now nobody wants, I'm stuck.

Q. Joe, I take you now more particularly to May 8th, 1974.

Oh, before I do that, Joe, this gentleman sitting over here, his name is Jack D'Angelo, right? A. Yes.

Q. You know him how well? A. Pretty well.

Q. How long have you known him? A. Ten, eight, 12, 15, I don't know, many years.

Q. And he is a friend of yours? A. Yes.

Q. And with this problem you had did you speak to him about it? A. Yes.

Q. Did you tell him Adams Iron Works, Incorporated – A. Yes.

Q. (Continuing) – had a lot of trouble with the Union? A. Yes.

MR. BLYER: Objection.

171 MR. FERLAINO: Take it subject to – I'm going to call this man.

MR. BLYER: I have no problem with that. Just think this part of the case which is an important part of the case, he should not lead his own witness and I think he has been doing it for the last couple of questions.

MR. FERLAINO: Judge, I will not lead the witness.

Q. (By Mr. Ferlaino) Tell us what you asked Mr. D'Angelo and what he told you? A. I asked him, Mr. D'Angelo can help me.

He say, you know, he can get a better deal with the Union, you know, and refer to me, see what deal he could get, you know.

Q. And let you know about it? A. Sure.

MR. BLYER: Objection, your Honor.

JUDGE MULLIN: Objection sustained.

Q. (By Mr. Ferlaino) Is he an officer of Adams Iron Works, Incorporated? A. No.

Q. Is he a director of Adams Iron Works, Incorporated? A. No.

Q. Is he a stockholder of Adams Iron Works, Incorporated? A. No.

Q. I show you this book and ask you if this is the official corporate
172 records of Adams Iron Works, Incorporated?

Is this the book, the corporate records?

A. Yes

Q. Who are the stockholders here? A. Me and my wife.

Q. Only you? A. Originally.

Q. No, who are the stockholders today? A. Me.

Q. Just you, Joe? A. My wife is secretary-treasurer.

Q. But she is not a stockholder? A. No.

Q. Who are the directors? A. What do you mean director?

I'm everything.

MR. FE NO: I will offer this book in evidence.

Q. Is Mr. D'Angelo metioned in these books? A. Never.

Q. Was he ever a director, an officer or stockholder of this corporation?

A. Never.

Q. Never? A. Never saw the shop either.

Q. Was he – your answer to my question is no; is that right?

173 A. No.

MR. FERLAINO: I will offer it in evidence.

MR. BLYER: Well, if we can take a look at it, maybe we can stipulate that he is not.

JUDGE MULLIN: The trial will be in order.

MR. BLYER: Your Honor, General Counsel is willing to stipulate that Mr. D'Angleo was not, according to the Company's corporate records an officer or –

MR. FERLAINO: I didn't ask you for a stipulation. I offer it in evidence.

Do you have objection or not?

MR. BLYER: No, I have no objection. I just think –

MR. FERLAINO: Let us mark it in evidence.

MR. BLYER: You want this whole book in evidence?

MR. FERLAINO: I want you to pass it on. I can't leave it with you.

Is the only proof I have of the existence of this organization for however long it is going to live.

MR. BLYER: Maybe if we can stipulate –

MR. FERLAINO: I am almost ready to file a petition for dissolution and I almost recommended it.

JUDGE MULLIN: As far as receiving that corporate record book --

MR. FERLAINO: Will you stipulate he is not an officer of the cor-

174 poration, stockholder or director of the corporation?

MR. BLYER: Yes.

MR. FERLAINO: All right, your stipulation stands. I stand corrected.

JUDGE MULLIN: Very well, the stipulation is received.

MR. FERLAINO: And the record discloses that Joseph Bonanno is the only stockholder of this corporation.

Q. (By Mr. Ferlaino) Mr. Bonanno, had Jack D'Angelo ever signed a check or any instrument for this corporation with your authority? A. Never.

Q. Have you ever authorized him to sign any contract, agreements, papers, anything? A. No.

Q. Did you ask him to help you to speak to the Union and see if he could get you a better deal? A. Yes.

Q. What else did you tell him? A. I told him to, you know, if he can help me with the deal, he could get a better deal.

Q. Was he to tell you what the deal was?

MR. BLYER: Objection, your Honor.

I apologize for interrupting but Counsel –

175 JUDGE MULLIN: Don't lead.

Q. (By Mr. Ferlaino) What else did you tell Jack? A. I tell to see if he could get a better deal I could survive to, don't throw me out of business and let me, show me what is the deal, that's all I tell him.

Q. On May 8th, 1974 when they met at the hotel were you there at that time; is that right? A. Yes.

Q. The negotiations were carried out as Mr. Colavito said between Mr. Colavito, Mr. Schifano and Jack D'Angelo? A. Yes.

Q. They did the talking? A. It was talk.

I don't know what they was talking about anyway.

Q. After they stopped talking did everybody leave? A. Yes.

Q. Did you meet them in the lobby and just say – A. No, I was sitting with the lawyer Gaba on the opposite side of the table.

Q. He is your lawyer, Richard Gaba, right? A. Yes.

Q. I recommended him to you; is that right? A. Correct.

Q. He went in to speak to them then; is that right? A. No, no,

then I called Mr. Schifano or Mr. Colavito to come on our table and they
176 come with Mr. Schifano.

Q. What happened? A. And we talk over there the same thing we can get, you know.

Q. What did you tell Mr. Schifano and Mr. Colavito? A. I says we over here, I saw – maybe you want, want to tell me, tell me something good, you want to talk to Jack, tell what is the story, you know.

I want to talk to him direct, talk to Jack, authorize Jack to talk to you and let me know what is.

I ask Jack what is coming true, what coming deal you are getting and that is all was the talk.

Then they left, they say see what we could do and come out into something better, this and this.

Q. After that did you see up until May 29th Mr. Colavito or Mr. Schifano? A. No.

Q. And you don't know what happened in that time? A. No.

Q. Were you present on May 28th on a contract supposedly dated May 29th? A. No.

Q. When was the first time you learned about this contract? A. When Mr. Schifano brought in the shop Mr. Mazzanti for a job.

177 Q. What happened then? A. He say "I took Mr. Mazzanti for the job."

"I no ask for Mr. Mazzanti," I said.

"I no got no job for him and I got no contract with the Union."

Q. What did he say? A. He said "Oh, you signed a contract."

I said "I no sign a contract."

He said "Jack D'Angelo signed a contract."

I don't know anything about it, I don't know, I no authorize nobody

to sign my contract, and he left.

Q. On June 26, 1974 were you present in the office with me? A. Yes.

Q. And the two same gentlemen, Schifano and Colavito? A. Yes.

Q. Did I ask them in your presence to make substantial reductions in the contract? A. Yes.

Q. Did they say they agree to negotiate minor matters but nothing substantial? A. Correct.

Q. Didn't I say to them that you can't live with 35 or 40 per cent for welfare and pensions, et cetera? A. I tell too, not only you.

178 Q. What did you tell them? A. I can't survive.

Q. What else did you tell them? A. I tell them too much benefit, too much pay, too much this, too much.

Everything was too much.

Got to give, got to give coffee break and special shoes, everything is in there, I don't know.

It is tremendous. I can't survive one month.

Besides, this the contract says the corporation go broke, that is what I understand in the contract, I be responsible personally to cover it for how you call it, to guarantee the men so much each year.

I got my house, whatever, I got personal, all my work and sacrifice and lose everything.

I said this condition I can't afford a contract like this, it is impossible.

Q. Did you tell them at that time you didn't sign the contract? A. Yes.

Q. Did you tell them about Jack D'Angelo not being authorized to sign the contract? A. Yes, yes.

Q. Did they say anything about that? A. No.

179 Q. Did you direct me on July 1st to write them a letter that you were prepared to negotiate with them? A. Yes.

Q. If they would make substantial - A. Yes.

Q. (Continuing) - modifications of the old 1973 agreement? A. Yes.

Q. Did you ever hear from them? A. None.

MR. FERLAINO: That is all at this time, Judge.

JUDGE MULLIN: Cross-examination.

CROSS-EXAMINATION

Q. (By Mr. Blyer) Mr. Bonanno, Mr. D'Angelo is a personal friend of yours? A. Yes.

Q. You did business with his company, didn't you? A. Business?

Q. Didn't you do some iron work for his catering business? A. Never, never.

Q. You didn't?

Mr. D'Angelo owns Pisa Caterers on 86th Street in Brooklyn?

180 A. Yes, I know he is there, yes.

I don't know if he is the owner or not.

Q. At least he is involved with it? A. Yes.

Q. Didn't you do iron work for Mr. D'Angelo? A. Never.

Q. Your firm never did any iron work for them? A. No.

MR. FERLAINO: Counsel, please don't show your consternation.

THE WITNESS: If I did show me.

Q. (By Mr. Blyer) How do you know Mr. D'Angelo? A. I meet him many place.

We live in Staten Island and before in Brooklyn, at a wedding, at a dance, social affair, and we meet in the street.

That is only thing we know.

Q. Did you meet him through the caterer, through the catering?

Did you attend –

A. The first time could be over there, could be at an affair.

It could be any place, another hall, Micali.

Q. Did you know that he met with Mr. Colavito before May 8th in Brooklyn in a coffee shop?

181 Did you know that?

A. No.

Q. He didn't tell you he met with him? A. No.

Q. He didn't tell you before May 8th – excuse me, he didn't tell you before he met with Mr. Colavito in Brooklyn at a coffee shop he was going to meet with him? A. No.

Q. Did he tell you after that he met with him?

JUDGE MULLIN: Do you understand the question?

Q. (By Mr. Blyer) Mr. Colavito testified that he met with Mr. D'Angelo.

A. See, I told –

Q. One second, Mr. Bonanno, he met with Mr. D'Angelo for the first time in March of 1974 at a coffee shop or in a bar and restaurant in Brooklyn near 86th Street.

Did you know they were going to meet?

A. No.

Q. Did Mr. D'Angelo tell you that he met with him after he met with him? A. I don't think so, no.

Q. When was it that you first asked Mr. D'Angelo to help you out?

A. I asked before this time, you know.

Q. Approximately when? A. Oh, it could be the end of, the middle

182 of April, the first of April, 1973.

Q. 1973?

A. I mean '74.

Q. '74? A. Yes.

Q. Could it have been a little before then also? A. It could be, yes.

Q. When was the first time that you knew Mr. D'Angelo met with anyone from the Union? A. When I called for May 8th on the Holiday Inn at the LaGuardia Airport.

Q. Who did you call? A. I called Mr. D'Angelo.

Q. What did you tell him? A. I said come over there, see if you can help me.

Would be the vice president, would be there, my lawyer be there and see if we could out with something, you know.

Q. And he went to that meeting; isn't that right? A. Yes.

Q. When you were standing outside waiting for your lawyer Mr. D'Angelo went inside? A. Yes.

Q. You knew what they were doing at the table, didn't you, that they
183 were — A. Suppose to talk, you know.

Q. That they were talking about a contract? A. About a contract.

Q. Then, after that, you didn't join them? A. No.

Q. After that meeting which you didn't take part in and your Attorney didn't take part in, a little bit later in the day you sat down with your Attorney and Mr. Schifano and Mr. Colavito? A. Correct.

Q. At that time I think it was your testimony that you told Mr. Colavito that you authorized Jack to negotiate for you? A. No authorize, I mean, I didn't say authorize.

Q. I thought that was the word you used? A. To help any way to see what deal could come out, give me a better deal, something to survive, and then he come to me, what kind of deal he got.

I don't know, I don't authorize him to sign a contract.

Q. What did you tell Mr. Colavito about Mr. D'Angelo? A. Talk to Jack, maybe you don't want to say to me something, you want to say to him.

Maybe you want to see my lawyer, some better deal.

184 See what is come out, you know, and Mr. Colavito said "We see."

He said "I don't know how much I can do. I try my best," you know.

Q. At that time Mr. Gaba and you agreed that he would no longer be involved? A. Which?

Q. On May 8th in the coffee shop at that point?

MR. FERLAINO: I don't understand the question.

Q. On May 8th in the coffee shop when you were sitting down with Mr. Colavito and Mr. Schifano, did you tell them that Mr. Gaba no longer would be involved, that Mr. D'Angelo was taking over talking? A. No, I don't.

Q. Well, was Mr. Gaba ever involved again after May 8th in trying to get a contract. A. Yes, some later, yes.

Q. I don't hear you? A. A few days later, yes.

Q. No, no, listen to my question.

Did he ever meet with Mr. Colavito or Mr. Schifano after May 8th, Mr. Gaba?

A. No, I don't think so.

Q. Didn't he stop representing you at that time? A. Yes.

185 Q. And Mr. Ferlaino?

MR. FERLAINO: The substitution was only signed about a month ago where Mr. Gaba stepped out of the picture.

Q. (By Mr. Blyer) The point is after May 8th Mr. D'Angelo took over talking with the Union about a new contract.

MR. FERLAINO: That question, one moment —

A. He don't take over.

JUDGE MULLIN Objection sustained.

MR. FERLAINO: We have two occurrences so far.

He has testified he hasn't talked to him between those periods, May 8th, May 28th.

Q. (By Mr. Blyer) After the meeting on May 8th, the meeting among Mr. Schifano, Mr. Colavito, Mr. Schonfeld and a man named George and Jack D'Angelo, you didn't sit in at that meeting right in the coffee shop

A. What day?

Q. May 8th? A. No.

Q. You were waiting in the lobby for Mr. Gaba? A. I was outside, yes.

Q. Did Mr. D'Angelo ever tell you what they talked about? A. Not the day.

186 Q. Pardon me? A. No, on the day, no.

Q. Any day did he ever tell you? A. After.

Q. How much after? A. The night.

Q. That night? A. Yes.

Q. And he told you that the Union was willing to —

MR. FERLAINO: Objection to the term willing, Judge.

What the Union was prepared to do, sir.

Q. (By Mr. Blyer) Did he tell you that the Union was offering to only require time and a half for overtime on Friday and Saturday? A. No, he say was, you know, if possible to do something to get a better deal, you know, he no give me any definite figure.

Q. He didn't go over what the Union told him? A. No, you work on now —

Q. You will work on it?

Didn't you ask him what did the Union say? A. Yes.

Q. What did he tell you? A. He don't say nothing to him too, not so much.

187 They said we see, we still got to show something.

Q. What I'm asking, Mr. Bonanno, on the evening of May 8th did Mr. D'Angelo tell you what the Union had spoken to him about earlier that day? A. Yes.

Q. Did he tell you? A. He told me he talked to Mr. Colavito and the rest and they say he no give nothing definite yet, see what he come up with, something, you know.

Q. Didn't he tell you what he said? A. No.

Q. And you didn't ask him? A. He no give, I don't think give anything him to tell.

I don't hear anything but he don't tell me nothing.

He said we talk, we talk nothing concrete yet, you know.

Q. Just talk but he said nothing has been accomplished? A. Nothing accomplished.

Q. Do you know how long they talked? A. That time in the Holiday Inn.

Q. On May 8th the first time? A. Half an hour.

Q. And about an hour?

MR. FERLAINO: Half an hour he said.

Q. About a half hour?

188 A. Yes.

Q. Nothing was accomplished? A. No that I know.

Q. That is what Mr. D'Angelo said? A. Yes.

Q. Did he tell you, and he didn't talk to you about any of the subjects that were discussed? A. No.

Q. You heard that Mr. D'Angelo met again with the Union at the Holiday Inn.

As I understand it and I think the record will show it was on May 28th?

MR. FERLAINO: No, sir.

Q. Or May 28th, whatever the case may be? A. I don't know anything.

Q. You heard today that they met on May 28th or May 29th, right? A. Yes.

Q. The contract is signed May 29th? A. I heard before today.

Q. You knew this before today? A. Yes, sure.

Q. When did you know of this meeting, before it happened or after it happened? A. I knew after they signed the contract, after they bring
189 Mr. Mazzanti and then I called him in the place what happened.

Q. Did Mr. D'Angelo tell you he was going again to the Holiday Inn? A. No.

Q. To meet with the Union? A. No.

Q. He went there on his own? A. I tell him to try to help me. I don't know what was going.

Q. And you let him do whatever he wanted? A. Well, for what?

Q. Did he tell you that he was going to the Holiday Inn? A. No, I don't know.

Q. You didn't know this? A. No.

Q. You say after he signed the contract he told you that he had done so? A. No, after they brought Mr. Mazzanti to the shop, then I know because he didn't tell me then.

Q. The contract was signed on May 28th or May 29th and Mr. Mazzanti —

MR. FERLAINO: Your Honor, I object.

The contract on its surface was signed May 29th, Judge, you have a copy of it.

190 JUDGE MULLIN: Yes.

MR. FERLAINO: The meeting was on May 28th.

MR. BLYER: The effective date of the contract is May 29th as I understand, your Honor, and the meeting was held either on the 28th or the 29th.

In any event, from the time of that meeting, the second meeting at the Holiday Inn until June 3rd did Mr. D'Angelo call you up or come over to you to see you and tell you he signed a contract?

THE WITNESS: No.

Q. (By Mr. Blyer) When Mr. Schifano walked in it was totally new to you? A. Yes.

Q. You didn't know what he was talking about? A. No.

I called in the evening Mr. D'Angelo.

Q. I'm sorry? A. I called in the same evening, the 30th and Mr. D'Angelo, find out what happened now.

Q. After Mr. Schifano came in? A. Yes.

Q. Was there ever a time that Mr. D'Angelo called you to let you know that he had signed the contract? A. I find a couple of message with the secretary, Jack he called and I wasn't there and then I wasn't in contact

191 with Mr. D'Angelo.

Q. I'm sorry. A. He called a couple of times.

I said the secretary told.

I say he want anything?

No, he just tell he called, that's all.

Q. Was this before June 3rd? A. Yes, I think so, yes.

Q. Before June 3rd? A. Yes.

Q. After May 28th or after May 29th, somewhere in between May 29th and June 3rd? A. I don't understand.

Q. The messages. A. It was before June 3rd, I say.

Q. Before June 3rd? A. Yes.

Q. And after May 29th? A. I said before June 3rd I find the message. It could be June 1st, could be June 2nd, I don't know.

Find a message over there.

He say Jack called.

I say what he want?

He say he no left message, that is it.

192 Q. Did you speak to him before June 3rd? A. No.

MR. BLYER: I would like to have this marked as General Counsel's Exhibit No. 10, please.

(The document above-referred to was marked General Counsel's Exhibit No. 10 for identification.)

Q. (By Mr. Blyer) Mr. Bonanno, do you remember you met with me and Mr. Ferlaino in your shop? A. Yes.

Q. At the end of September, 1974? A. Yes.

Q. I asked you some questions? A. Yes.

Q. Then, at the end as I was writing down in my own words what you said I then submitted the document to your lawyer? A. Yes.

Q. I show you what has been marked for identification as General Counsel's Exhibit No. 10.

Can you identify what this is? A. Was the report you write when you asked me the questions.

Q. Yes, and this is your signature on Page 5? A. Yes.

193 Before you signed it isn't it true that Mr. Ferlaino read it over? A. Yes.

Q. In fact in a number of places over here — A. He changed.

Q. He changed, right.

Now, I ask you to read to yourself and I hope you can read my handwriting, the last paragraph on Page 2.

Just read it to yourself, just this short paragraph here.

A. I —

Q. Don't read it outloud.

Read it to yourself and when you are finished just let me know.

A. I don't understand too good the writing.

Q. Which sentence can't you read? A. All of it.

MR. BLYER: Your Honor, with your permission can I read the last paragraph outloud?

JUDGE MULLIN: Yes.

Q. You told me "I was not present when D'Angelo signed the contract on May 28th and 20th. I did not know D'Angelo was going to meet with the Union again after May 8th. A few days after he signed the contract he called and told me."

194 Now, you testified today they never called you and told you he signed the contract.

Now, which is accurate, your testimony today or this here?

A. See, I don't remember.

See, the night I called him and he no was there and they returned the call.

That could be, you know.

Q. So on June 3rd you say you called him and he was not there and he may have returned your call? A. Yes.

Q. But it is your — A. It could be.

Q. But it is your testimony that when Mr. Schifano walked in with Mr. Mazzanti you didn't know anything about this contract? A. No.

Q. You didn't know about it? A. No.

Q. Mr. Bonanno, as I understand your testimony some time in around early April of 1974 you told Mr. D'Angelo to see if he could help you out with the Union.

MR. FERLAINO: This has all been gone over. It is repetitious.

MR. BLYER: It is leading up to a question that is all.

195 A. Yes.

Q. After that time is it true that you only spoke with him one more time up until June 3rd?

You only spoke to him once thereafter until June 3rd?

MR. FERLAINO: There is no such testimony in the record.

MR. BLYER: I am asking isn't it true that you only spoke with him once after you first told him to help you?

A. You mean April to —

Q. Around April or late March, around this time you told Mr. D'Angelo to see what he could do to help you out with the Union, right? A. I meet Mr. D'Angelo many times on the street or in a dance, I meet him some other place. I see him many times around.

Q. I know you see him a lot but some time in late March or early April around there in 1974 you told him "Help me out, speak to the Union, see what you could do"? A. When was this?

Q. I think you said some time around early April or maybe a little before? A. Yes.

Q. Now, you testified that on the night of May 8th you spoke to him

196 a little bit? A. I called him, yes.

Q. You called him? A. Yes.

Q. But you didn't talk very much about what the Union said your testimony was? A. You mean after?

Q. On May 8th when you spoke. A. In the evening.

Q. In the evening the only thing he said to you "We didn't get much accomplished"?

MR. FERLAINO: Your Honor, repetitious.

We covered all this.

MR. BLYER: I am trying to get to a question.

A. Yes.

Q. "We didn't accomplish too much," right? A. Yes.

Q. Other than speaking to Mr. D'Angelo on May 8th did you speak to him at any time other than that? A. No.

Q. Until June 3rd? A. Yes.

June 3rd, yes.

Q. So in between the time that you told him to help you out you spoke to him once? A. Yes

197 Q. On May 8th and in between the time when you first asked for help and June 3rd? A. You mean —

Q. When you first — A. May 8th?

Q. In between the time you first asked for his help in around — A. To April?

Q. In around April or May? A. No, I spoke to him before too, after, yes.

Q. You spoke to him — A. It could be any other day.

I talked to him more than once.

Q. About the Union matter, about the Union problems?

You say you spoke to him May 8th?

A. Yes.

Q. You say you spoke to him June 3rd? A. Yes.

Q. And there was one time in late March or early April of 1974 that you first told him to help you out? A. Yes.

Q. Did you speak to him at any other time during this period about helping you out with the Union or what the Union was proposing?

198 A. The end of April, the beginning of May maybe I spoke to him at the time.

Q. What did he tell you? A. The same thing, see what he can do, see what he can do.

Q. Did he ever tell you what the Union was proposing? A. No.

Q. And you never asked? A. He wasn't, no.

Q. He didn't know either? A. Because he still didn't know the Union guy give him an answer, got to give something.

Q. You never talked specifically what the Union was proposing?

A. Never.

MR. BLYER: I have nothing further, your Honor.

REDIRECT EXAMINATION

Q. (By Mr. Ferlaino) This Mr. Schonfeld, the lawyer, was he ever your lawyer? A. Never.

Q. Did you ever pay him any money? A. Never.

MR. FERLAINO: That is all, step down.

MR. BLYER: I have nothing further.

JUDGE MULLIN: The witness is excused.

199 (Witness excused.)

Whereupon,

JACK D'ANGELO

was called as a witness by and on behalf of the Respondent and, having been first duly sworn by Judge Mullin, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Ferlaino) Mr. D'Angelo, how long do you know Mr. Joe Bonanno? A. Twelve years, maybe more.

Q. You are managing the Pisa Catering Hall in Brooklyn, New York; is that right? A. Yes.

Q. In the course of managing that you meet many, many people; is that correct? A. Yes.

Q. Many people of political, judicial standing and so forth; is that correct? A. Yes.

Q. Today you introduced me to Judge Damiana who you met at your catering hall; is that correct? A. Yes.

Q. He is the Justice of the Supreme Court and in the Appellate Division, I believe? A. Right.

200 Q. You met Joe maybe once every two or three months either at — A. More often, much more often than that.

Q. You live close to each other in Staten Island? A. Yes.

Q. Joe ever express to you he had problems? A. Yes.

Q. What did he say? A. Told me he had problems with the Union and he couldn't very well explain himself to them, and if I could, would do him a favor to speak with them for him, being that he can't speak too well, doesn't understand too clearly, so I said I will get around to it, I will.

Q. This was said more than once I guess, wasn't it? A. Yes.

Q. Over a period of months and months? A. Right.

MR. BLYER: Your Honor, I can only —

MR. FERLAINO: I won't do it any more. I will bring him up to May.

Q. (By Mr. Ferlaino) On May 8th did you have occasion to meet with the Union at the Holiday Inn? A. Yes, I did. We met.

Q. Who was there? A. Myself, George, Schonfeld and Colavito and Schifano.

201 Q. Schonfeld is who? A. Schonfeld is a friend of mine besides being an Attorney that I use in a different kind of business, in Playland, he owns

Playland and we went out to look at the Playland near Rockaway Turnpike and that is why.

Q. On this particular day; is that right? A. That's right.

Q. In the meantime you met with the Union people, right? A. Yes.

Q. And they got together and then you went over into the coffee shop; is that correct? A. Yes.

Q. Who went into the coffee shop? A. We all did, excluding Joe Bonanno, the same people I mentioned before.

Q. Did his lawyer come later? A. I didn't even know it was his lawyer.

He came in on a motorcycle.

They sat on another table.

Q. And these gentlemen were there? A. Yes, they sat with us.

Q. Did you talk with them about Joe's business conditions? A. Yes, we discussed the whole thing with them and we stayed about a half hour.

202 We had a sandwich as well and then we went away.

He couldn't very well give me much answers.

He said he would let me know the next time we come together.

I told him what I would want and he said it is a lot of things impossible, couldn't be done and I said well, the guy can't stay in business, he will wind up closing up.

So he says well, a lot of people say that but there is nothing we can do, we have to go by the law of the Union and this is what we have to do.

Q. Then thereafter did you speak to Joe about this generally or specifically? A. Joe asked me a few times and I said to him there is nothing to tell you.

They said the next time they come they will tell me everything and I will give you an answer then.

Q. Did they deliver some contracts to Schonfeld, if you know?

A. Well, I'm not, I can't swear to it.

I'm not — nothing that I seen except that when we were sitting at the table, that is the second meeting which was May 29th.

203 A. No, it was the 29th because I know I'm off on a Wednesday and it was a Wednesday.

That is how I know I was sitting there listening to you, but it is May 29th, on a Wednesday.

We discussed the different articles of the contract.

Q. Was this gentleman there? A. No, not at all, neither was —

Q. Was he aware of the meeting? A. No, he wasn't, but for the simple reason that I figure let's not tell him anything, he gets all nervous and when I got everything together then I will tell him.

So I didn't tell him a thing about it.

We sat down, Mr. Colavito, we discussed the Saturday and we discussed how many men would work with the mechanic and so forth.

And I said is there anything else?

He said no, that is all.

There are these paragraphs that Joe is really worried about, so I said okay.

So he took out some typewritten paper and I says "Is this the whole contract?"

He says "No, I didn't bring the whole contract. I brought part of it.

"These are where the articles are" and as a matter of fact he underlined

204 the paragraphs, different words in the paragraphs that cover the Saturday where he said it would give time and a half instead of double time, and again about — I'm not too familiar with that kind of work, but again as far as how many mechanics to a laborer and so forth.

Q. So what further happened? A. So after we read the whole thing.

Q. These are these pages that he brought? A. Yes, then he said to me that, he said "Would you sign it?"

I said "I'm not an officer."

He said "Well, it don't make any difference," he said. "We have been arbitrating this a long time," he said, "At least show something."

I said but I'm not an officer, so I turned around to Schonfeld and I said "Schonfeld, I'm not."

He says "I know you are not an officer."

So I signed it.

Q. You didn't sign your name as corporate officer, you just signed your name? A. I just signed it.

Q. The corporation's name wasn't even written, just Adams; is that correct? A. I don't recall, I don't recall that.

205 Q. At any time were you ever given written or oral authority to sign contracts on behalf of this corporation? A. No.

Q. Did you ever sign a check on behalf of this corporation? A. No.

Q. Did you ever sign any instruments, any notes, anything on behalf of the corporation? A. Nothing.

Q. You were not an officer, director or stockholder of this corporation? A. No.

Q. Were you at any time ever an officer, director or stockholder? A. No.

Q. Did you ever tell these men that you were authorized to sign? A. No.

Q. Did you tell them that you weren't authorized to sign? A. No. That I wasn't?

Q. Yes. A. I didn't say nothing.

I told them that I'm not an officer, that's all I told them.

206 MR. FERLAINO: That is all.

JUDGE MULLIN: Mr. Schonfeld's first name is George?

THE WITNESS: No.

MR. BLYER: I think the testimony was Joel.

CROSS-EXAMINATION

Q. (By Mr. Blyer) Who is George? A. He's a friend of mine from Florida who comes up for a few weeks and drove us down there.

Q. Mr. D'Angelo, it was your testimony that you turned to Mr. Schonfeld on May 29th after telling Mr. Colavito that you were not an officer and that you told Mr. Schonfeld you were not an officer and he agreed with you? A. Yes.

Q. Then you signed the contract? A. Yes.

Q. After he agreed with you that you were not an officer why did you sign it? A. Because they wanted to show that there was a meeting, for the simple reason that this thing had to be accurate for a long time, it's been laying around.

It seems as though he was notified before by the Labor Board to try and make an agreement, Bonanno, I mean.

Q. Yes. What did you think you were accomplishing by signing?

207 A. To show that there was a meeting, that we had discussed this thing here.

That is the reason why I signed it.

Q. You signed the contract where it says person authorized to sign and you mean you knew were signing a contract, didn't you? A. Yes, I knew it was a contract but I didn't know it was going to hold as a contract.

Yes, I knew it was a contract but I thought it was just as though

I was there, I told him I wasn't an officer.

Q. You are a businessman, aren't you? A. Yes.

Q. You sign contracts all the time I suspect? A. My own contracts.

Q. Your own contracts, people come in for catering affairs? A. Yes.

Q. Once they put the name on the line, if they put down a deposit and then they cancel they have to pay, don't they? A. Do I have to answer that here? That is not true but let us not go into my business now.

Q. You do have them sign a contract to bind them to their agreement?

208 A. Sure, and it don't mean nothing in my business.

Q. But you are not familiar with this business; is that right? A. No.

Q. Of negotiating contracts? A. No.

Q. Never did that before? A. No.

Q. And you weren't familiar with the iron works business too much at all, were you? A. At all.

Q. You stated that your first meeting on May 8th that you told Mr. Colavito what you wanted? A. Yes.

Q. How did you know, what did you tell him that you wanted?

A. What Joe Bonanno told me he wanted.

Q. What did Joe tell you? A. Joe told me try and make it, you know, as easy as possible, see if you can only have three workers because he wanted 11, they were asking for 11 men.

Joe Bonanno said he could only use three, where does 11 men come in? That is one of the items.

209 Then the other one was the Saturday, the other one was the laborer, the mechanic with the laborers and how many mechanics to each laborer and so forth.

Q. These were things that Mr. Bonanno told you he wanted changed?

A. Yes, he says find out about it, yes.

Q. When Mr. Colavito told you about the mechanics and apprentices and helpers business did you have any idea what he was talking about?

A. No, I didn't, but I had to relate back to him.

Q. So you did in fact get in touch with Mr. Bonanno and tell him what he was talking about? A. Not the first time, not the first time.

I didn't say anything to him on May 8th, I didn't say a thing to him.

Q. To who? A. To Mr. Bonanno.

Q. On May 8th isn't it a fact you told and I think you just testified that you told Mr. Colavito that Mr. Bonanno was worried about three things, he wanted three men rather than 11, that he wanted something to be done about the mechanic-apprentice ratio and he also had a problem and I forget the third subject.

Isn't it your testimony that after Mr. Colavito told you what he was willing to do with regard to the mechanics-apprentice-helper ratio that you

210 told Mr. Bonanno about this?

A. When I told him it was after the 28th already.

Q. You didn't tell him after May 8th? A. No.

Q. You waited until after you signed the contract to tell him? A. I think so because nothing was — nothing was bona fide until after he came to May 29th.

Q. You signed that contract then before you told Mr. Bonanno about this concession that the Union was willing to make regarding helpers, apprentices, mechanics ratio? A. I can't think of it.

I got mixed up on — my time is —

Q. Let me ask you this, did you have any understanding what it meant?

A. No. I told him I'm not an officer, I distinctly told him I wasn't an officer.

Q. I'm talking about the concession that the Union was willing to make

and did in fact make regarding the helper-apprentice-mechanic ratio? A. Yes.

Q. You didn't really comprehend what they were doing, did you, when they talked about that? A. No, I'm not familiar with that.

211 Q. I understand that, and what I'm asking you is prior to signing that agreement or that contract did you inform Mr. Bonanno of this concession that Mr. Bonanno as you stated was interested in? A. No, not at that time.

Q. When did you tell him? A. I believe I told him after the 29th.

Q. After you already had signed the contract? A. After the 29th which was about maybe the 3rd.

Q. So you think you spoke to him as early as the 30th of June?

A. Of June?

Q. I mean May? A. No, I said the 3rd.

Q. Oh, the 3rd, I'm sorry. A. I think the 3rd.

MR. FERLAINO: He said the 3rd of June.

Q. I'm sorry, I didn't hear.

I thought you said the 30th.

A. There is not much noise in here, is there? Go ahead.

Q. Isn't it true that at the end of the meeting on May 8th that you asked Mr. Colavito to send the contract to Mr. Schonfeld? A. Yes, you are right.

212 The reason is that –

Q. I didn't ask you for the reason, sir. A. Okay.

Q. On May 29th isn't it also true that Mr. Schonfeld accompanied you again to the Holiday Inn to discuss matters with the Union officials?

A. 29th, yes.

Q. On that occasion, on the 29th you had no appointment with Mr. Schonfeld regarding any Playland, did you? A. Yes, sir.

Q. Pardon me? A. I did.

We made – in other words, next time we were going we were going to go the same time rather than back and forth.

Q. So on both occasions you went – A. Well, I have been there several times since but I figured while we were going up that way let's make it at that time.

Q. What were the other subjects that Mr. Bonanno you said was interested in, just the ones we know are the mechanics-helpers ratio and the other was wages.

What was the third? I'm sorry, not the wages.

You said there were three subjects that he first told you about.

213 A. It was more than three.

It was three that we discussed.

Q. Number of employees? A. Number of employees.

Q. Mechanics helper, apprentice ratio and what was the other you mentioned? A. Saturdays.

Q. Oh, on Saturday, this was something that Mr. Bonanno was concerned about? A. Yes.

Q. The Union on May 8th told you they were willing to do what regarding Saturday? A. They were going to let me know.

May 8th, no, they were going to let me know. They don't give me an answer then.

They were going to let me know.

May 29th.

Q. On the 29th they let you know? A. Yes.

Q. You are saying prior to the 29th they hadn't made it clear they were willing to permit employees to work on Friday and Saturday beyond the 40 hours at time and a half? A. We are speaking about the Saturday now, right, Saturdays.

214 They originally was speaking about double time.

Then they went to time and a half.

Q. Time and a half? A. Yes.

Q. When did they tell you they were willing to go to time and a half? A. 29th.

Q. They didn't tell you that before? A. No.

Q. Didn't this subject come up even at your first meeting in the coffee shop near the Pisa Caterer's in Brooklyn, this issue of the Union willingness to make a concession regarding – A. I never went to an appointment before that.

May 8th was the first meeting I went on.

Q. Oh, you never met Mr. Colavito? A. No, I told you this once before.

Q. You never met Mr. Colavito in Brooklyn in a coffee shop? A. No.

Q. So that was the first time you saw him on May 8th? A. Right.

* * * * *

215 Q. (By Mr. Blyer) Mr. D'Angelo, did you see this contract which has been introduced into evidence, General Counsel's Exhibit 2? A. Yes.

Q. Prior to the 29th of May? A. I believe I seen part of this contract which was underlined.

I seen part of this contract which was underlined, certain items in Paragraphs were underlined.

Q. When was that, sir, that you saw underlined parts of the contract? A. May 29th.

I'm trying to look. I don't think this is the one I looked at.

216 It was like this though.

Q. Did you see the contract on May 8th at the Holiday Inn? A. No.

Q. Did Mr. Schonfeld show you the copy they received form the Union? A. Yes.

Q. So prior to the 29th of May you had seen this contract? A. Yes.

Q. Did you look it over? A. He looked it over for me.

Q. Did you discuss it with Mr. Schonfeld? A. No, I don't have to discuss it with him.

Q. He said he looked it over? A. Yes.

Q. Did he mention to you about the passages in there regarding overtime, that it had been reduced to time and a half rather than double time?

A. Seeing that when I went up there with him.

In other words, he held it until I seen him because I had to meet him to go up to where he had to go and he was with me and then in the car he gave it to me and we discussed it.

Q. You discussed it on your way to the meeting on May 29th? A.

217 Yes, I read it myself.

* * * * *

Q. (By Mr. Blyer) But it is your testimony that in the car on the way to the May 29th meeting you and Mr. Schonfeld had a discussion about the overtime issue? A. Discussion was "Here's your papers, read them."

Q. He told you he had looked at them? A. Yes.

Q. Was there any discussion regarding the time and a half rate that it states in this contract for overtime? A. Any discussion with him, no.

Q. Was there any discussion regarding the helper-apprentice-mechanic classification as laid out in this contract? A. I told you that was discussed.

Q. No, no, with Mr. Schonfeld? A. No.

Q. Before May 29th? A. No.

Q. Did you note in the contract that there was any change on that issue?

218 A. Yes.

Q. Did you note that? A. Yes.

Q. So before you sat down on May 29th with the Union you knew that they had made a change in the contract on that subject? A. Right.

Q. On May 29th do you recall any discussion with the Union about Mr. Bonanno becoming a working foreman? A. Yes.

Q. How was it that you knew that Mr. Bonanno wanted to become the working foreman? A. How come I knew it?

I didn't know it but being it is a corproation, the corporation is not an owner and being that it is not an owner he could be a worker.

Q. So you negotiated that part of the contract on your own? A. Yes.

Q. You assumed that Mr. Bonanno wanted something like that? A. Well, I'm trying to get what I could for him.

Q. You didn't know he wanted anything like that? A. No.

219 Q. What about the issue here regarding the expiration date of the contract, was that your idea or Mr. Bonanno's that the contract should expire in 1977? A. It was my idea. I wanted more time yet but they told me they can't do any more than that.

Q. But you agreed to '77 rather than '75 as the expiration date? A. Right.

Q. Did you check with Mr. Bonanno first before you agreed to that part of the contract which says that the Company shall pay all increases, funds and fringe benefits that will be negotiated in the standard industry contract following the contract that expires on June 30th, '75? A. We didn't go through that at all.

I didn't know about that at all.

Q. Well, on May 29th wasn't that handwritten in by Mr. Colavito? A. Yes, but I didn't know about this.

But I didn't know anything about this. This was the welfare, is that it?

Q. This states that although the contract expires on June 30th of '77 that the Company, Adams Iron Works agrees to pay any increases in the funds which is the welfare pension fund and so on and any wage increase or increases of any other sort that are negotiated within the industry-wide con-

220 tract? A. Excuse me?

Q. Is negotiated in '75? A. Excuse me, this is – do I have my initials on this?

Q. There are no initials on that, no. A. Well, I don't know when it was written, I take it back.

Q. Was this written on May 29th in your presence? A. I don't know.

I'm not denying either way, Judge.

I don't know, but I know one thing, I have no initials on this.

Q. That is right, I understand that. A. So that is all I'm telling you.

Q. As far as your recollection? A. As far as my recollection I would have initialed or he would have told me to initial.

Q. What about the working foreman, was that written in, Mr. Bonanno becoming a working foreman? A. I don't know.

I know I discussed it with him and he said it was all right.

We had a five-minute discussion on that.

Q. Did you look at this document before you signed it? A. No,

221 because the only things that were important to me that he spoke about which he says the things he's interested in was we discussed, which was Saturday, which was the mechanic with the laborers and the other item we discussed and he said everything else is the same exactly what he told me, everything else is the same as it was.

If everything was the same as it was it is all right.

Q. How long have you been in the catering business, sir? A. Twenty-seven years.

Q. As a manager for all those years? A. Yes.

MR. BLYER: I have nothing further.

MR. FERLAINO: That is all, Judge. It is a quarter after 5:00.

I renew my motion with respect to the failure to establish any agency whatsoever.

As a matter of fact, there is an absolute absence of any evidence and I respectfully move to dismiss the complaint or the petition on behalf of the Respondent.

MR. BLYER: Your Honor –

MR. FERLAINO: No evidence.

MR. BLYER: I would like to be heard.

MR. FERLAINO: No evidence of employment, Judge, no evidence, no
222 proof of agency.

Do you want to photostat these, Counsel, because I will take them.

JUDGE MULLIN: Do you have anything further?

MR. BLYER: I have nothing, no rebuttal witnesses, your Honor, but I would, if necessary, if you feel it is necessary, I would like to respond to Respondent's motion.

JUDGE MULLIN: I would prefer that you submit a memorandum.

MR. FERLAINO: On the question of agency?

JUDGE MULLIN: Yes, and I will set a date for filing.

MR. FERLAINO: For what?

JUDGE MULLIN: I will set a date on or before which I would like to get the memorandum.

MR. FERLAINO: When would you set that date?

JUDGE MULLIN: I will do it right now.

I will take your motion under advisement and the Reporter will have the transcript ready I presume in 10 days.

With that in mind and the holiday season coming up I will ask Counsel how much time they need for the submission?

MR. FERLAINO: I would ask him to serve us with a copy and let us be permitted to respond, Judge.

223 JUDGE MULLIN: Well, I would like to do that but Board Rules require simultaneous filings.

MR. FERLAINO: Then we will abide by the rules.

I expect to be out of town starting from Christmas to New Years.

It is the first vacation I have taken, not in ten years, but in about two years and if I keep this pace up I will need a ten year vacation.

MR. BLYER: Your Honor, I just finished a five-day trial before Judge Bernard Reis involving a lot of complicated issues and that is one –

JUDGE MULLIN: These are familiar declarations, gentlemen.

MR. FERLAINO: The question of agency is not the hardest topic of law to research.

I think this is the principal point in this whole case, your Honor.

JUDGE MULLIN: It certainly is a very significant issue and I will set January 17th.

MR. FERLAINO: All right, Judge.

JUDGE MULLIN: January 17th.

MR. FERLAINO: Now, the testimony will be before us and I'm not going to order any testimony.

MR. BLYER: I have a copy. You give me a call and make sure I am here and we will make the record avail ole for you.

224 JUDGE MULLIN: I have sat down the date for briefs as being January

17, 1975 and that is agreeable with Counsel, I gather?

MR. FERLAINO: Yes, Judge.

JUDGE MULLIN: I look forward to seeing your memoranda or briefs.

MR. FERLAINO: If it is postmarked the 17th it would be satisfactory?

JUDGE MULLIN: It is suppose to arrive in Washington on the 17th.

You will have to take your chances with it, with the postal service, but they are, according to rules, to be in Washington on the 17th.

If there is nothing further I gather for the record, according to my notes General Counsel's Exhibits have all been received with the exception of the one marked for identification as Number 10, the affidavit of the witness Bonanno that was not received and all others were received.

Respondent's Exhibit No. 1 and its only exhibit was received and if the transcript does not reflect the reception of the exhibits as of just now indicated I will so indicate now.

There is nothing further I take it?

MR. BLYER: Nothing further on my part.

225 JUDGE MULLIN: You don't want to argue orally at this hour?

MR. BLYER: I will defer my oral argument to a memorandum of law.

JUDGE MULLIN: All right.

Very well, then with that I thank all you gentlemen, both of you for your efforts to present a full and complete record, and with that the hearing is now closed.

(Whereupon, the hearing was closed.)

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

No. 76-4051

ADAMS IRON WORKS, INC.,

Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have served by ~~hand~~ (by mail) 3 copies of the APPENDIX in the above-entitled case, on the following counsel of record, this 7 day of June 1976.

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